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Report of the Independent Expert on the enjoyment of all human rights by older persons

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comprehensive report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, prepared pursuant to Council resolution 24/20. In the present report, the Independent Expert assesses the implementation of existing international instruments with regard to older persons while identifying best and good practices and gaps in the implementation of existing laws related to the promotion and protection of the rights of older persons. The report also provides an analysis of the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002.

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I. Introduction

1. On 27 September 2013, in its resolution 24/20, the Human Rights Council created the mandate of the Independent Expert on the enjoyment of all human rights by older persons. Rosa Kornfeld-Matte was appointed as Independent Expert in May 2014 and took office on 1 June 2014.

2. The mandate entrusted to the Independent Expert is new and all-encompassing. It recognizes the challenges that older persons face related to the enjoyment of all human rights, and the fact that those challenges require in-depth analysis and action to address protection gaps. Pursuant to resolution 24/20, the Independent Expert is requested to assess the implementation of existing international instruments with regard to older persons. In doing so, she is asked to identify both best practices and gaps in the implementation of existing law related to the promotion and protection of the rights of older persons. Another key aspect of the mandate is the assessment of the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002.

3. As part of her mandate, the Independent Expert is also requested to raise awareness of the challenges faced in the realization of all human rights by older persons, and to ensure that older persons receive information about those rights.

4. In discharging her mandate, the Independent Expert continued to take into account the views of States and other stakeholders, as stipulated in paragraph 5 (b) of Council resolution 24/20. She also sought to integrate a gender and disability perspective throughout and paid particular attention to, among others, older women, persons with disabilities, persons of African descent, individuals belonging to indigenous communities, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets, and refugees.

5. The Independent Expert conducted her work, as requested, in cooperation with States in order to foster the implementation of measures that contribute to the promotion and protection of the rights of older persons. She also participated in the annual sessions of the Open-ended Working Group on Ageing in order to ensure a coordinated approach while avoiding unnecessary duplication. While the focus of the Independent Expert's analysis is on implementation of existing laws and resulting protection gaps, the Working Group is mandated to identify possible gaps in the existing international framework of the human rights of older persons and how best to address them, including by considering the feasibility of further instruments and measures.

6. The present report is submitted pursuant to paragraph 6 of Council resolution 24/20, in which the Council requested the Independent Expert to present a comprehensive report at its thirty-third session. The present report is comprehensive in the sense that it covers all aspects of the Independent Expert's mandate. It provides a snapshot of the situation of older persons, based on information collected during the reporting period, through the analysis of implementation gaps and best practices, assesses the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002, and highlights the areas in which more in-depth analysis and continued monitoring of developments is required to ensure the promotion and protection of the human rights of older persons.

7. The report is based on the information provided to the Independent Expert during her tenure, between June 2014 and June 2016, and in the light of the all-encompassing nature of the mandate, does not claim to exhaustively cover the whole spectrum of challenges faced by older persons in the realization of their human rights. As a matter of fact, in her initial report to the Human Rights Council, the Independent Expert identified a number of thematic priorities that require thorough analysis. During her tenure, she was

able to report to the Council only once, in September 2015, on autonomy and care (A/HRC/30/43).

8. The present report should be read and considered in conjunction with the Independent Expert's previous reports to the Human Rights Council, especially those on her country visits to Slovenia (A/HRC/30/43/Add.1), Austria (A/HRC/30/43/Add.2) and Mauritius (A/HRC/30/43/Add.3), as well as the report on her visit from 9 to 18 May 2016 to Costa Rica (A/HRC/33/44/Add.1). Other reports also need to be taken into account, namely the report of the Independent Expert outlining her understanding of the mandate and her priorities for her first tenure (A/HRC/27/46) and her thematic report on autonomy and care and the activities undertaken during her first tenure.

9. In accordance with Council resolution 24/20, the present report will also be brought to the attention of the seventh session of the Open-ended Working Group on Ageing, which is scheduled to be held in New York from 12 to 15 December 2016.

II. Activities of the Independent Expert

10. Since her previous report to the Human Rights Council in September 2015, the collection of best practices in the implementation of existing law has continued to be a focus of the Independent Expert's activities. On 15 September 2015, during the thirtieth session of the Human Rights Council, the Independent Expert participated in a side event on best practices in the implementation of existing laws on the human rights of older persons, organized jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Republic of Austria, with the support of Argentina and Slovenia, as well as the NGO Committee on Ageing, Geneva, and the International Longevity Centre Global Alliance. The event aimed to provide a better understanding of the challenges faced by States in the implementation of existing law related to the promotion and protection of the rights of older persons and to identify and share best practices and recent developments in that area. It allowed for an open dialogue with the aim of formulating concrete recommendations for an effective and integrated response at the national and global levels.

11. On 6 October 2015, further to General Assembly resolution 69/146, the Independent Expert held her first interactive dialogue with the Third Committee of the General Assembly. She particularly welcomed the opportunity for an exchange of views with delegations in New York and regrets that the valuable practice will not be continued in 2016.

12. From 10 to 12 February 2016, the Independent Expert participated in the fifth international conference of the Réseau d'études international sur l'âge, la citoyenneté et l'intégration socio-économique, entitled "Ageing and Empowerment: Between Resources and Vulnerabilities", held in Lausanne. The conference sought to explore vulnerabilities and resources linked to ageing from the perspective that older persons can maintain or acquire agency throughout their life trajectories. The Independent Expert reiterated the need for a human rights-based approach that is centred on the inclusion of older persons in society in order to ensure autonomous and healthy ageing.

13. On 11 and 12 April 2016, the Independent Expert participated in the International Conference on Ageing, held in Brdo pri Kranju, Slovenia, to discuss ways and means to effectively empower older persons. In her opening remarks, she particularly welcomed the Conference's contribution towards shifting the focus of the discussion from stocktaking to concrete action, calling on the participants to rethink ageing and to improve implementation at the global level. The Independent Expert was very pleased that, further to the conference,

Argentina and Slovenia launched the Group of Friends on the human rights of older persons.

14. In accordance with her mandate, the Independent Expert continued to pay attention to specific groups of older persons, including refugees and climate-displaced persons, as well as persons facing conflict, emergency or disaster situations. On 15 March 2016, on the occasion of World Social Work Day, the International Association of Schools of Social Work and the International Federation of Social Workers organized a conference in Geneva entitled "Refugees and Displaced Persons: the Role of Social Work". The Independent Expert contributed to the panel discussion on forced migration and the role of social work, highlighting the disproportionate impact emergency situations have on older persons. The need to build older persons' resilience in disaster situations was also the focus of the Independent Expert's contribution at the Climate Displacement Roundtable organized in Geneva on 25 and 26 April 2016 by Displacement Solutions and the Global Migration Centre of the Graduate Institute Geneva.

15. On 3 and 4 May 2016, the Independent Expert participated in the Human Rights Working Group Dialogue Series on Frontier Issues of the United Nations Development Group on the issue of Human Rights and Urbanization in New York, which was jointly organized by the United Nations Human Settlements Programme (UN-Habitat) and OHCHR, under the auspices of the United Nations Housing Rights Programme. In the dialogue session, discussions focused on ways in which strengthened enjoyment of human rights in cities for all can facilitate strategic, sustainable and inclusive solutions, with a view to implementing the 2030 Agenda for Sustainable Development. Also discussed was the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), to be held in Quito in October 2016, which will result in a new urban agenda to guide inclusive, integrated and sustainable urbanization for the next 20 years. She also participated in the Habitat III cross-cutting expert group meeting on human rights and urbanization, organized by OHCHR. At those meetings, the Independent Expert called, inter alia, for the participation of older persons in the design of urban form and urban infrastructure to ensure that they address the needs for social and sustainable cities in which people can live and work, and that older persons benefit from elder care in their neighbourhood.

16. The Independent Expert also actively advocated for human rights to be taken into consideration at the first World Humanitarian Summit, which was held from 23 to 24 May 2016 in Istanbul, Turkey, to improve the protection of older persons affected by conflict, disaster and displacement.

III. Human rights of older persons

A. Background

17. Older persons represent a large, and the fastest growing, segment of the global population. By 2050, for the first time, there will be more older persons than children under the age of 15 worldwide, and it is projected that the number of older persons will more than double from 900 million currently to nearly 2 billion.[1] A demographic transformation of such magnitude has far-reaching implications for society at all levels.

[1] See www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2014-4Rev1.pdf.

18. The population is ageing in all regions of the world. While Western Europe continues to have the oldest population, 67 per cent of older persons currently live in developing countries. In the years to come, most of the projected growth will take place in the global South, as some countries and regions entered the demographic transition only recently.

19. The older population itself is also ageing. The group of persons aged 80 or over, which currently accounts for 14 per cent of older persons, will grow to 21 per cent in 2050.

B. Regulatory and normative developments

20. In her first report to the Human Rights Council, the Independent Expert provided an overview of the international instruments and initiatives pertaining to the rights of older persons. The 2012 report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (E/2012/51 and Corr.1) contains a thorough analysis of existing international instruments and gaps in the protection regime. In 2011, OHCHR had prepared a valuable background paper for the Open-ended Working Group on Ageing, in which it reviewed existing international human rights norms as they apply to older persons and summarized the relevant work of some international human rights mechanisms, particularly treaty monitoring bodies and special procedures, in addressing substantive human rights issues in all regions of the world.[2] The present report therefore focuses on the regulatory and normative developments that have taken place since the completion of the Independent Expert's previous report.

21. On 15 June 2015, the States members of the Organization of American States approved the Inter-American Convention on Protecting the Human Rights of Older Persons. It has not yet received the two ratifications required for the Convention to enter into force.

22. The Convention is the first regional normative instrument dedicated to older persons and represents a major step forward in addressing the human rights of older persons. The Convention is an example of good practice that could inspire other regions, as it allows States to strengthen cohesion and normative action and to clarify States' obligations with regard to the rights of older persons.

23. The African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa is another major development. The Protocol covers a range of rights including access to health services, freedom from discrimination and the right to employment, social protection and education, providing a framework for Governments to protect those rights.

24. The adoption of the Sustainable Development Goals by the General Assembly on 25 September 2015 represents an important step forward, as older persons are included directly or by implication in 15 of the 17 global Goals. In particular, Goal 3: Ensure healthy lives and promote well-being for all at all ages, will be instrumental in fighting age discrimination within health systems to ensure that older persons around the world enjoy their basic human right to the highest attainable standard of health and well-being as they age. The challenge ahead is to ensure that those commitments are followed through and the goals are met.

[2] See http://social.un.org/ageing-working-group/documents/OHCHR%20Background%20paper%202011.pdf.

IV. Best practices and gaps in the implementation of existing law

A. Mandate and methodology

25. In its resolution 24/20, the Human Rights Council requested the Independent Expert on the enjoyment of all human rights by older persons to assess the implementation of existing international instruments with regard to older persons while identifying best practices in the implementation of existing laws related to the promotion and protection of the rights of older persons and gaps in the implementation of existing laws.

26. Pursuant to that request, on 12 November 2015, the Independent Expert sent out a questionnaire to States and stakeholders to identify and collect best practices and good practices. As at 2 June 2016, 74 replies had been received, 40 of which had come from States, 14 from national human rights institutions, 19 from non-governmental organizations and 1 from an intergovernmental organization. The replies were posted on the OHCHR website.[3]

27. For the purpose of the present report, a best practice was considered to be a particular method, whole programme or specific intervention that had been successfully implemented in a country, that prima facie followed a human rights-based approach and that could inspire other countries. More specifically, the term "practice" is understood to include legislation, policies, strategies, statutes, national plans, regulatory and institutional frameworks, data collection, indicators, case law, administrative practices, scientific research or projects that are currently being implemented. Promising practices, that is, those that may not have been tested or may not have been in existence for long, but seem to generate positive results and have significant potential, were also taken into account.

28. The following summary is based on the information received and cites some of the practices outlined in the responses for illustrative purposes. The Independent Expert wishes to note that without in situ visits and a comprehensive review of the situation of older persons in a given country, it will not be possible to fully appraise all practices shared by the different stakeholders. She wishes to express her appreciation to those States and other entities that responded to her questionnaire and thereby contributed to building an invaluable repository of knowledge and information on the situation of older persons.

B. Legal, institutional and policy framework

29. A number of countries have adopted national strategies, action plans or specific legislation on older persons, which are sometimes comprehensive in nature or geared towards specific areas such as non-discrimination or the right to health of older persons. The involvement of older persons in the formulation of such strategies is essential in order to target the strategy, policy or law to the needs and concerns of older persons. Older persons can be involved either through the establishment of consultative bodies, which may consist of members of civil society representing the interests of older persons, or through comprehensive consultative processes between the Government and older persons, for example public consultations, working groups or more targeted focus group discussions. Consulting academics also allows for the incorporation of the results of applied research. A participatory approach is required to ensure coordination among all levels of government, such as the national, regional and local levels, and across departments and institutions.

[3] See www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/GoodPractices.aspx.

30. There are also programmes and policies that address specific groups of older persons, such as those living on the street, indigenous older persons and older lesbian, gay, bisexual, transgender and intersex persons.

31. Reference was also made in the responses to the Global Age-Friendly Cities project of the World Health Organization and its implementation. The project addresses eight areas of the urban and social environment that influence the health and quality of life of older persons. Cities and communities should adapt their structures and services to the needs of older persons in the following areas: public spaces and buildings, transport, housing, social participation, respect and social inclusion, civic participation and employment, communication, and community support and health services.

C. Care

32. The Independent Expert's report on autonomy and care contains an assessment of the challenges and concerns in the area of care, as well as detailed action-oriented recommendations. That report is complemented by the thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/18/37).

33. Several good or promising practices were reported in the area of care. The responses, however, revealed the need for a comprehensive, all-encompassing and human rights-based approach to the care of older persons, as well as the need for coordination among sectors throughout the continuum of care, from prevention, promotion, rehabilitation, through to long-term and palliative care, including social care and other community services.

34. The existence of a dedicated body in charge of national coordination between sectors, institutions, regional and local governments can facilitate the implementation of a national strategy. Some countries, for instance, have created specific divisions or focal points at the ministerial level tasked with focusing on ageing initiatives and ensuring policy implementation.

35. Another interesting practice is the creation of a working group on care ethics within the Government, which studies ethical issues relating to care and provides non-binding advisory opinions. It also proposes the development of best practices and guidelines, as well as training subjects for professionals, for instance in the field of geriatric care ethics.

36. The right to extensive information on public support services and different means of nursing and care should be enshrined in the legislative framework. Adequate information about care, the rights of older persons and the protection available for older persons in care settings can be provided through various means, including websites, dedicated contact centres in care settings, resource centres and through other forms of advocacy. Educational materials are another important source of guidance for older persons. Clear information and advice help older persons to make informed choices about their care arrangements and enable them to stay in control of their lives.

37. The introduction of mandatory medical insurance facilitates equal access, including for older persons, to health-care services. Some countries provide access to public health care free of charge for older persons, which may include additional benefits for the most disadvantaged groups of older persons or those in precarious situations.

38. Older persons living in rural areas often have particular concerns, including in the enjoyment of their right to health. They may face challenges with regard to the availability of transportation to medical appointments, of home and community-based services and long-term care in their communities. Particular attention therefore needs to be paid to that

segment of the older population. Examples of targeted action include the formulation of rural health plans and the provision of mobile units to provide health services to older persons.

39. Ageing at home is the option often preferred by older persons. A number of countries have designed specific programmes seeking to enable older persons to live in their homes independently for as long as possible. Support and home-care services provided include nursing care, which is also provided for terminally ill older persons, social-care services and domestic assistance to older persons to avoid referral to institutional care and prevent social exclusion. One example of a comprehensive approach is the establishment of mobile multidisciplinary teams that provide social care services and health-care and paramedical services. National civic services may also be a valuable resource to assist older persons who live alone or in community centres. Regular home visits by students allow older persons to remain integrated in the community, while at the same time raising the younger generation's awareness about the rights of older persons.

40. A central aspect of home-care services, on which little information has been provided and that is not sufficiently covered by human rights instruments, is assistance and support to family members and other informal caregivers. That should include human rights, medical and human resources training, counselling and financial, social and psychological support. The attribution of care credits to informal caregivers in the calculation of their old-age pension is an official recognition of the work undertaken by informal caregivers and reduces the risk of old-age poverty among those who care for their family members, especially women.

41. Care situations can be intensive and demanding and conflict can arise within families, for instance regarding the division of care responsibilities or differing perceptions of the seriousness or impact of the parental situation and needs. Without effective management, such dysfunctional family dynamics can escalate and lead to neglect or abuse. Mediation is an alternative dispute resolution mechanism for resolving such conflicts without recourse to formalized legal proceedings.

42. Day-care centres are another way to ensure appropriate care, while avoiding institutionalization and the potential social exclusion of older persons. They also form part of the support network needed by informal caregivers. Another example is the placement in host families of older persons who do not have family support, which requires that a system is in place to provide assistance to the host families and to ensure quality control.

43. The creation of active ageing hubs within new housing estates is an innovative approach that combines learning and leisure activities with various forms of care, from assisted living services to day care and day rehabilitation.

44. There are various forms of institutional care settings providing accommodation while trying to ensure home-like conditions together with integrated health services, as well as social and psychological services, for those in need of care. It is essential in that regard that States establish quality monitoring and effective and transparent accountability mechanisms for public and private care settings and that they provide remedies in case violations are detected, for instance through a dedicated complaint mechanism. That requires clearly defined accreditation requirements and procedures, the development of benchmarks and quality standards, as well as reporting and monitoring guidelines to assess the quality of care by sufficient and well-trained staff, taking into account the evaluations of older persons themselves. A good example is the creation of an inspectorate to provide oversight for the operations of residential homes for older persons.

45. The creation of differentiated therapeutic environments within care settings allows for the provision of services that are adapted to the varying functional abilities of older persons, which creates a supportive environment for people with different needs,

preferences and abilities. Different activities will, for instance, be available for older persons with cognitive impairment or reduced mobility than those who are frail and have a partial or total lack of autonomy.

46. An interesting approach is the co-location of facilities for childcare and eldercare, which allows for the introduction of innovative programmes and the generation of interaction between the very young and the older persons.

47. Geriatric services are an essential element of care programmes for older persons in order to meet the needs of an ageing society, as their patterns of disease presentation differ from those of younger persons. They respond to treatments and therapies in different ways, and frequently have complex social needs that are related to their chronic medical conditions. The recognition of geriatrics as a medical specialty, specialized training of doctors and nurses and the establishment of geriatric centres in public and private care settings will help ensure the availability of geriatric services in various care settings and facilities.

48. Restraints are often used in the care of older persons with dementia. Methods include locked doors, forced bathing and the use of psychotropic substances, even though that may not be permitted by law. Providing information and education about how to avoid the use of restraints for both professionals and relatives will contribute to protecting the dignity of older persons and their right to decide without being restrained. That provision might encompass handbooks for professionals, informal caregivers and relatives, online training, web-based education, films, podcasts and applications to raise awareness about the rights of older persons with dementia in care settings.

49. Some countries have involved their national human rights institutions in monitoring how the human rights of older persons living in or seeking long-term care are being upheld, through visits to care institutions and interviews with authorities and other stakeholders. That helps to promote a human rights-based approach to long-term care and enables the human rights institutions to collect meaningful and qualitative data on how human rights are taken into consideration in policy and in practice.

50. A different approach that is sometimes taken is for institutional care settings or services that provide home care to carry out self-evaluations of their practices. The objective is that a positive attitude is adopted and that a culture of good as opposed to ill-treatment is created, while at the same time an awareness of the inherent risks is maintained.

D. Social protection

51. The 2010 report of the independent expert on the question of human rights and extreme poverty on the social protection of older persons (A/HRC/14/31) continues to constitute an important resource, as it provides an overview of the main protection gaps and challenges older persons face.

52. Poverty and lack of income security constitute major concerns for many older persons. Social transfers, in particular adequate pensions, significantly contribute to ensuring the financial security of older persons and are a suitable means of reducing the at-risk-of-poverty rate, their vulnerability and social exclusion.

53. A number of countries have universal basic retirement pensions and provide disability pensions and other additional allowances to supplement old age pensions in order to ensure a reasonable income for older persons and to protect them from poverty. It is important that the pensions are calculated giving due consideration to the true cost of living. Moreover, the non-contributory systems that some countries have established are preferable

to contributory social security systems, which tend to accentuate gender inequality, with older women more likely to receive lower pensions and other contributory benefits. Some countries provide social welfare grants to provide income support to infirm and older persons in need, as well as those with disabilities, in order to ensure that they have an adequate standard of living.

54. The provision of a universal public pension is an alternative model that prevents old age poverty as it is paid to every older person starting at a particular age, but regardless of income, assets, employment status or history. Since there is no mandatory retirement age, it also allows older persons to remain in the labour market for longer periods. Moreover, as it is universal, such a public pension scheme is relatively simple to administer, since no means test or employment record is required.

55. Providing information and advisory services on social security payments, pensions and retirement planning contributes to preventing old age poverty.

56. As populations continue to age, the financial sustainability of social security systems increasingly becomes a concern. Medium-term projections of the sustainability of public expenditure highlight areas that require reform.

57. The promotion of resource-generating activities will also help to reduce the risk of poverty of older persons. Particularly in developing countries, training can be provided to older persons to enable them to develop and manage microprojects, or specific credit lines can be established for older persons for the financing of resource-generating activities.

E. Right to work

58. Participation in the labour market enhances the self-esteem of older persons, their social inclusion and their financial security. Older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors. The practices, attitudes and legal framework that affect the equal participation of older persons in employment need to be analysed in order to design measures to prevent employment discrimination and effectively address existing barriers to older persons' participation in the workforce.

59. The establishment of a repertory of skills or an online platform of older persons serves several purposes. It enhances the esteem in which the valuable contribution of older persons is held within the family and society and enhances intergenerational solidarity. At the same time, it encourages older persons to continue to remain active and productive and enables older persons' know-how, expertise and skills to be matched up with employers' needs for expertise and advice. A critical mass of data is required for optimal functioning of the repertory. That may require awareness-raising campaigns in order for older persons to register. Encouraging volunteerism is another way to empower older persons to continue contributing to their communities and foster a positive image of older persons as contributing members of society. Employers' and networking fairs have similar objectives.

60. Changing the attitudes of employers towards older workers and raising employers' awareness of the business benefits of hiring older workers may help to create new opportunities for older persons. Other measures to encourage employers to recruit and retain older workers include financial and technical assistance. Employment of older persons in public services in designated areas, such as auxiliary roles for a limited period, should also be considered.

61. Improving older persons' access to the labour market can also be achieved by providing older jobseekers with career counselling, labour market training and subsidies for business start-ups, as well as job mediation. Opportunities for older persons with reduced

work ability can be created by temporary sheltered employment and an enabling environment, including transportation support, work-related rehabilitation, mobile counselling and experience-based counselling. Ongoing research on incentives and conducive environments that would allow older persons to extend their working lives beyond the pensionable age is important to assess the changes that need to be made in regulations, taxes, training and company environments to promote the right of older persons to work.

F. Equality and non-discrimination

62. Under international human rights law, discrimination is defined as any distinction, exclusion or restriction that has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in any field. While that encompasses discrimination on the basis of age, and although many countries have enacted anti-discrimination legislation, ageism remains a major concern for older persons in their daily lives. It is therefore essential that legislation contain an explicit prohibition of direct and indirect discrimination on the basis of age.

63. Some countries have adopted laws that focus on the prohibition of discrimination in employment and occupation. Others have more comprehensive laws that prohibit age discrimination in various areas of public life, including accommodation, education and employment, and may even extend to the provision of goods, services and facilities. That is important as older persons' access to facilities and services, in particular financial services, such as loans and mortgages, and insurance, is often a matter of concern. Those services may simply not be available to older persons or not accessible as they may be prohibitively expensive as a result of the inappropriate use of age as a criterion, including for determining risk. Equality bodies, which can take various forms, including commissioners or ombudspersons, should be established by law to monitor age discrimination and advocate for its elimination across all areas of public life. Enforcing the right to non-discrimination requires complaint mechanisms. There are instances in which that competence is conferred on equality bodies themselves.

64. Non-discrimination in employment should encompass access to employment, self-employment and occupation, including selection criteria and recruitment conditions, including promotions, employment and working conditions, including dismissal and pay, and membership of a workers' or employers' organization.

G. Violence and abuse

65. Violence against older persons is a global phenomenon. It takes many different forms and there are indications that it occurs frequently in all types of settings. It includes discrimination in the public sphere, linguistic discrimination, isolation, neglect, financial exploitation, psychological violence and the withholding of basic needs, as well as physical attacks. Such violence often goes unnoticed and remains a taboo in many societies, as the perpetrators are frequently relatives, such as the older person's partner, spouse, children or children-in-law.

66. The lack of reliable information and data constitutes one of the obstacles to effectively addressing violence against older persons. Nationwide studies on the implementation of laws and court decisions relating to violence against older persons are essential to identify obstacles and problems in the implementation of existing laws. It is equally important to examine the different forms of violence and abuse of older persons in

various settings, taking into account a gender perspective. The findings should constitute the basis for further action.

67. Some countries have specific strategies for the prevention of elder abuse and have developed guidelines on violence prevention. The objective is to detect the level of violence in an organization or institution and to provide guidance on how to initiate violence-free treatment and care practices in older persons' and nursing homes. Training programmes, including for security forces, are essential to help prevent and detect elder abuse.

68. Little information was provided on measures to support victims of violence and abuse, such as hotlines.

69. The development of safety action plans to prevent the main threats to the security of older persons was another topic that was mentioned in questionnaire responses. The main threats were abuse in its various forms, robberies, thefts, scams and the fraudulent use of older persons' property. The action plans also seek to build older persons' confidence in the police and to encourage older persons to contribute more actively to crime prevention and to report crimes, either as victims or witnesses.

H. Participation

70. Several countries have established participatory mechanisms, such as national or local councils, to ensure the participation of older persons to guarantee that States develop age-sensitive laws and policies to implement and mainstream access to the required protection. Some bodies operate at the national level, others at the local level, and may be composed of organizations of older persons, civil society organizations working on issues of interest to older persons, experts and academics, national human rights institutions and older persons themselves. Competencies vary and include the right to put forward proposals to the Government on issues of relevance to older persons, analysing public policies relating to ageing, or providing information to the authorities on the challenges faced by older persons.

I. Adequate standard of living

71. Housing is an essential aspect of active ageing and of the ability of older persons to live an autonomous life. Adequacy and affordability is often a concern, particularly in countries where tenant protection is weak. A number of countries reported on housing or rent assistance programmes for older persons to improve their access to adequate and affordable housing.

72. There are also programmes specifically targeting older persons living on the street. They encompass comprehensive assistance in terms of food, clothing and other basic services, as well as overnight accommodation for those who do not wish to move into residences, in order to improve their quality of life.

J. Access to justice

73. Access to justice requires on the one hand enhanced awareness by older persons of their rights, legal aid and availability of effective remedies and on the other hand that their specific needs in terms of accessibility be taken into account.

74. Several countries have designed comprehensive policies to facilitate older persons' access to justice. Measures comprise preferential treatment of older persons in judicial proceedings and the provision of adequate information in an age-friendly manner, as well

as the removal of physical barriers in court buildings. Moreover, members of the judiciary receive training on the rights of older persons.

75. Individual assessments of victims of crime seek to identify during criminal proceedings those victims who are most vulnerable, such as older persons, to secondary and repeat victimization, intimidation and retaliation. That practice benefits older persons as it identifies the particular protection needs of every victim.

K. Education, training and lifelong learning

76. Lifelong learning is not only a precondition for longer participation in the labour market, it also affects the social integration of older persons. A number of countries have developed lifelong learning programmes for older persons or created third age universities. It is important to take into account the specific needs and interests of older persons in designing educational programmes, as older persons learn differently from younger ones. At the same time, it is important to maintain a range of programmes that do not exclusively target older persons, as that would be limiting and could lead to the creation of social spaces of exclusion.

77. Educational programmes that are open to younger adults and older persons foster intergenerational learning and intergenerational understanding. An example is opening up regular university courses to older persons.

78. Education and training of older persons can take many forms. Examples are courses promoting the use of information technology by older persons and their participation in online communities, online platforms to train them to become entrepreneurs or virtual academies, which offer a wider range of courses and learning opportunities for older persons to enable them to remain cognitively and socially engaged. Some municipal centres provide integrated services for older persons, from cultural and recreational activities to socio-legal services.

L. Accessibility

79. Putting in place age-friendly and barrier-free infrastructures requires the systematic inclusion of accessibility criteria in housing and building codes and in city planning and the human rights compliant involvement of architects and engineers in the design of buildings and public places.

80. Measures to transform cities and communities and make them more accessible in terms of meeting the needs of older persons must target all areas, including transportation, public space and housing, to avoid the creation of so-called prison flats and care settings. Examples of improvements to buses, trains and pedestrian infrastructure are the creation of elevators at pedestrian overhead bridges and the longer duration of the green light to enable older persons to cross traffic junctions safely. Lighting, improved footpaths, seating and the removal of architectural barriers make public spaces more accessible and age-friendly.

81. Innovative accessibility approaches to ensure independent living include concepts such as smart homes, autonomous vehicles, the use of robotics and age-friendly smart cities.

82. The deployment of mobile teams to provide services to older persons in rural and remote areas, for instance civil documents, was also reported.

M. Awareness-raising and research

83. Many States conduct awareness-raising activities, some of which focus on ageing in general to promote a positive attitude towards older persons, or on specific issues such as age discrimination. They may target the general public, specific groups, for instance civil servants or caregivers, or older persons themselves. Such activities may take various forms, such as media campaigns, courses, workshops, conferences, forums, awards, call centres or publications. In addition, raising awareness about ageing and human rights in primary schools will promote intergenerational solidarity.

84. Sensitizing public service staff seeks to emphasize the obligations of civil servants as guarantors of human rights and to promote a culture of good treatment, which will ensure that manifestations of violence and discrimination are detected and reported and that support is provided to victims.

85. Several States have developed training or information materials for older persons to raise their awareness about their specific rights and about healthy and active ageing, in order to encourage them to participate in the cultural, economic, political and social life of their communities. Some States have developed a self-advocacy online handbook designed to increase and improve the involvement of older persons in all processes that affect their human rights. The establishment of self-help groups is also useful to educate older persons about their human rights.

86. The collection of traditional knowledge contributes to fostering positive attitudes towards older persons as bearers of ancestral local knowledge that is at risk of being lost and that needs to be transferred to younger generations. Such knowledge includes traditional medicine, agricultural techniques, history, food, customs and legends, music and instruments. In some instances, local authorities are charged with recording that cultural heritage and in other circumstances, social workers, civil society or older persons themselves are involved.

87. Some countries have conducted extensive research on the situation of older persons as a first step in the development of a national policy or strategy to identify the challenges faced by older persons, their needs and preferences, as well as to monitor the implications of implementing the policies or strategies. Important sources of information are national and departmental statistics, existing social surveys and political analyses, as well as the views of experts, academics and opinion leaders.

88. The creation of partnerships between national and local authorities, the public and private sectors, academia, civil society and older persons themselves may, through cross-fertilization, generate innovation-based solutions and approaches to active and healthy ageing.

V. Madrid International Plan of Action on Ageing, 2002: human rights implications assessment

A. Background

89. The Madrid International Plan of Action on Ageing, 2002, as the global aspirational policy document on ageing, was adopted at the Second World Assembly on Ageing, held in Madrid in 2002 in order to respond to the opportunities and challenges of population ageing in the twenty-first century. The Madrid Plan of Action addresses ageing issues from a developmental perspective, but also, for the first time, links ageing to other frameworks such as human rights.

90. The Madrid Plan of Action calls for all-inclusive and simultaneous action to achieve a society for all ages. It focuses on three priority areas: older persons and development; advancing health and well-being; and ensuring enabling and supportive environments. It constitutes a practical tool to assist policymakers in those areas. It contains a number of specific recommendations, bearing in mind the common features of ageing, but also the specificities of the circumstances in each country.

91. The implementation of the Madrid Plan of Action is assessed every five years through a periodic review and appraisal process at the national level, followed by the consolidation of information at the regional level, which is coordinated by the United Nations regional commissions, and a concluding global review by the Commission for Social Development. National reviews follow a participatory, bottom-up approach involving civil society and older persons themselves. A first and second review and appraisal concluded in 2008 and 2013 respectively, while the third was launched in 2015 and is expected to conclude in 2017.

B. Methodology

92. The Human Rights Council, in its resolution 24/20, requested the Independent Expert on the enjoyment of all human rights by older persons to assess the human rights implications of the implementation of the Madrid International Plan of Action on Ageing. For the purpose of the present analysis, human rights implications have been understood as any possible effects on the promotion and protection of the human rights of older persons as a result of deliberate decisions or actions taken by States in the implementation of the Madrid Plan of Action, such as the adoption of legislation or policies.

93. In accordance with Council resolution 24/20, in which the Council requested the Independent Expert to take into account the views of stakeholders, including States, relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions, a questionnaire-based review of the human rights implications of the implementation of the Madrid Plan of Action was carried out. As at 2 June 2016, 103 responses had been received, including 44 from States, and the remainder from national human rights institutions, non-governmental organizations and international organizations. They were placed on the OHCHR website.[4]

94. The questionnaire sought to capture the extent to which the implementation of the Madrid Plan of Action yielded outcomes that correlate or could be associated with an improved enjoyment by older persons of their human rights. It therefore aimed at identifying concrete measures taken by States in compliance with their obligations flowing from existing international standards further to the adoption of the Madrid Plan of Action, such as the adoption of national plans of action on ageing and specific legal, regulatory, policy or institutional frameworks dedicated to older persons, including those targeting specific groups of older persons, as well as measures that enhance the right to participation of older persons in the process of the implementation of the Madrid Plan of Action.

95. The present assessment of the human rights implications of the implementation of the Madrid Plan of Action draws on the information that the Independent Expert received in the responses to the questionnaires. Another element that the Independent Expert considered in her analysis was the extent to which States adopted a human rights-based approach in their implementation of the Madrid Plan of Action, namely, a conceptual framework normatively based on international human rights standards and operationally

[4] See the responses, with the exception of two submitted under seal, at www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/MIPAA.aspx.

directed towards promoting and protecting the rights of older persons. The questionnaire therefore sought to identify plans, policies, regulations and processes related to ageing that are anchored in a system of rights in which older persons are considered as rights holders. The questionnaire-based assessment is complemented by a content analysis of the Madrid Plan of Action in terms of human rights.

C. Madrid International Plan of Action on Ageing and human rights

96. While the Madrid Plan of Action is not a human rights document, it contains a number of references relevant to human rights and adopts a conceptual approach that is in accordance with human rights principles. In the document, States explicitly reaffirmed that the promotion and protection of all human rights and fundamental freedoms, including the right to development, are essential for creating an inclusive society for all ages, and therefore for ensuring that persons are able to age with security and dignity and to continue to participate in their societies as citizens with full rights. That constitutes a major step forward compared to the welfare-oriented Vienna International Plan of Action on Ageing adopted in 1982.

97. In article 5 of the Political Declaration and Madrid International Plan of Action on Ageing, States committed themselves to eliminating all forms of discrimination, in particular age discrimination, to ensure that all persons, as they age, enjoy a life of fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies. The rights of older persons to participate in all aspects of society, to work and to health, to independence and accessibility are referred to in articles 12 and 14 respectively. Furthermore, in the introduction, the Madrid Plan of Action refers to the United Nations Principles for Older Persons, noting that they provide guidance in the areas of independence, participation, care, self-fulfilment and dignity.

98. A number of priority objectives of the Madrid Plan of Action also contain relevant human rights references. Priority direction I on older persons and development includes specific objectives on ensuring the right of older persons to participate in the social, political, cultural and economic spheres of society, as well as in decision-making processes at all levels. It also calls for the reduction of poverty among older persons and the provision of sufficient minimum income for all older persons.

99. The promotion of the right to work and freedom from age-discrimination in the workplace environment is another objective. The right to education, training and lifelong learning, the right to social protection, the right to health, including access to primary health care, long-term care and palliative care services, the training of care providers and health professionals, in particular in gerontology and geriatrics, are part of priority direction II on advancing health and well-being. Priority direction III, on ensuring enabling and supportive environments, refers to care and the situation of caregivers, elder abuse and a series of measures to fight ageism.

100. The Madrid Plan of Action furthermore pays particular attention to targeted groups of older persons, including older women, older persons with disabilities, older persons with dementia, older migrants, older persons with chronic diseases, including HIV/AIDS, older persons living in rural areas and in situations of poverty and those in emergency situations, including refugees and internally displaced older persons. The ambit is restricted to specific situations, such as in the workplace, emergency situations or care settings.

101. The priority objectives included in the Madrid Plan of Action can be related to specific norms and provisions contained in international human rights instruments, either the Universal Declaration of Human Rights or the core human rights treaties. It can therefore be assumed that the full and effective implementation of the Madrid Plan of

Action, at least of those relevant priority objectives, would yield outcomes that could be associated with an improved enjoyment of certain human rights by older persons.

102. However, the second review of the Madrid Plan of Action, in 2013, showed that overall progress in its implementation had continued to be uneven, with several shortfalls, and that gaps between policy and practice, and the mobilization of sufficient human and financial resources had remained major constraints (see E/CN.5/2013/6, paras. 80-87). It remains to be seen whether the 2017 review will yield significantly different results.

D. Human rights implications assessment

103. The existence of a national plan of action points to a State's commitment to taking steps to ensure a series of measures aimed at improving the quality of life of older persons, although the adoption of such plans does not capture the substantive coverage of the rights of older persons, or their effective implementation.[5] Most of the States that responded to the questionnaire have adopted national plans of action on ageing and others are in the process of developing such plans. Some States have integrated the rights of older persons in other national action plans, such as on human rights, in national development or social exclusion and poverty reduction action plans.

104. A human rights-based approach has been adopted in the formulation of national plans of action on ageing or policies related to older persons, according to the replies received, in countries from all regions.

105. While most national plans of action on ageing were adopted after the adoption of the Madrid Plan of Action in 2002, the information received is not conclusive as to the extent to which the Madrid Plan of Action has been used to guide government action and policies or has directly influenced legislative and policy frameworks adopted after 2002.

106. The inclusion of the rights of older persons in the constitution or other form of superior law also provides an indication of a State's commitment or intention to protecting and implementing those rights and ensuring that other legislation is in conformity with them. It is important to note however that the non-inclusion of those rights should not lead to inaccurate conclusions on the enforcement and coverage of the rights of older persons, as in some countries few rights are written into the constitution or superior laws. In such cases, a detailed analysis of jurisprudence or administrative decisions would be required.[6] The replies to the questionnaire indicate that a large number of States have included the rights of older persons at the constitutional level or in other legal and policy frameworks, often focusing on age discrimination and social protection.

107. A number of States furthermore indicated that the Madrid Plan of Action has helped raise awareness of the situation of older persons. Several countries have conducted official studies in order to better understand the situation and the needs of older persons.

108. The most frequently mentioned rights were, in the order of frequency, the rights to: social protection, care, an adequate standard of living, equality and non-discrimination, dignity and integrity, in particular elder abuse, participation, education, independence and autonomy, work, accessibility, housing, transport, culture, access to justice, and rights in risk and emergency situations.

109. Some States have adopted specific legislation and policies in order to improve the care of older persons. That has sometimes included the adoption of quality standards and

[5] OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012), p. 35.

[6] Ibid., pp. 144-145.

accreditation mechanisms for care institutions. Others have adopted minimum standards or a charter of care rights and responsibilities in home and residential care settings to guarantee high quality ageing and effective services for older persons in need of assistance.

110. Also mentioned were specific training programmes based on a human rights-based approach for informal and formal caregivers. Some States also indicated that they recognize the work of informal caregivers through financial support and other services such as respite care, information and counselling.

111. Some sectors of care, such as palliative care or care of persons with dementia received little attention in those legal, policy and programmes frameworks. The development of targeted strategies regarding persons with dementia is however under way in some countries. Little information was provided about the existence of geriatric services in care settings. Two responses specifically indicated that higher diplomas in gerontology and geriatrics are available.

112. According to the information received, the issue of elder abuse is being considered as one of the main priorities. Several States have adopted specific programmes and laws in order to fight elder abuse, while others have focused on awareness-raising campaigns. Laws prohibiting discrimination based on age have been enacted and programmes promoting non-discrimination on the ground of age are being implemented in a number of States, although the main focus is on the right to work and social protection.

113. Laws or programmes to strengthen the autonomy of older persons covered areas such as persons with terminal or incurable diseases; informed consent in health care; legal capacity, in particular of older persons with disabilities; and the freedom of choice for users of social services.

114. The accessibility programmes mentioned encompassed assistance to older persons receiving care services in their own homes or in care homes; accessibility for persons with disabilities; age-friendly municipalities and cities; standards on accessibility in civil engineering; accessibility of roads and transportation; and digital inclusion. A number of States have adopted specific programmes related to age-friendly housing options, which include accessibility, financial aspects and resettlement options.

115. Several States indicated that since the adoption of the Madrid Plan of Action, they have undertaken reforms of their pension and social protection systems to respond to the challenges of an ageing society, notably by increasing the pensionable age and contribution periods.

116. Volunteering programmes of older persons or specific policies were referenced to encourage older persons to work beyond the statutory retirement age. That sometimes included incentives for employers to hire and/or to retain older workers.

117. The vast majority of the replies indicated that older persons participated in the implementation of the Madrid Plan of Action. That includes situations in which older persons or civil society organizations of older persons participated in the subsequent development of national plans of action on ageing or any policy-related framework at the national level.

118. In a number of countries, that participation has led to the establishment of dedicated institutions, such as national councils of older persons, with varying degrees of participation by older persons and other organs, depending on the country. Other reported forms of participation include direct communication with members of the Government or parliament; participation in national conferences and round-table discussions on the rights of older persons, or other forms of public consultation mechanism, including at the regional level; the establishment of national forums on older persons; and various awareness-raising efforts to encourage the participation of older persons.

119. From this synthesis of the information provided in the questionnaire responses, it can be deduced that the Madrid Plan of Action may have informed government action on older persons and that its adoption correlates with the development and adoption of national plans of action and specific laws and policies in a number of countries. It should be noted however that where legal and policy frameworks exist, they tend to focus on issues such as care, social protection, elder abuse or non-discrimination in the workplace, without addressing the full spectrum of civil, political, social, economic and cultural rights. Similarly, government action seems to target particular groups of older persons, such as those in need of care, without considering an age and disability perspective that takes into account the homogeneity of that particular group and encompasses the diversity of the health situation of older persons and their specific needs. The trend towards mainstreaming ageing into legal, policy, social and economic development frameworks is nevertheless welcomed.

120. The Madrid Plan of Action seems to have fostered the participation of older persons at various levels. Its contribution to raising awareness about the situation of older persons, in particular by giving visibility to age discrimination and elder abuse, has also to be recognized. That is an important step forward as the need for visibility has long been considered one of the main challenges faced by older persons.

VI. Conclusions and recommendations

121. **By 2050, there will be, for the first time, more older persons than children under the age of 15 worldwide. A demographic transformation of such magnitude has far-reaching implications for society at all levels. As the world population continues to age, the human rights dimension of ageing becomes an ever-growing concern. It is essential that the analytical lens is all encompassing and embraces the full set of human rights, economic, social and cultural rights, but also civil and political rights.**

122. **Older persons face a number of particular challenges in the enjoyment of their human rights that need to be addressed urgently. Several good or promising practices in the implementation of existing laws have been reported on issues such as the development of national strategies or action plans on ageing, and in the area of care, the right to work, social protection, equality and non-discrimination, access to justice, violence and abuse, education, training and lifelong learning, the participation of older persons, accessibility and awareness-raising. None of those areas has however been covered extensively and little or no information has been received on some crucial issues such as legal capacity, quality of care, long-term care, palliative care, assistance to victims of violence and abuse, available remedies, independence and autonomy, or the right to an adequate standard of living, particularly housing. Each of the aforementioned areas raises a set of issues and protection concerns that deserve in-depth analysis. The information provided also demonstrates the need for South-South cooperation and the sharing of good practices at the regional level to guide national-level implementation taking into account regional specificities.**

123. **The information received appears to indicate that the implementation of the Madrid International Plan of Action on Ageing may have positive implications for the enjoyment of some human rights by older persons. However, uneven progress with regard to the implementation of the Madrid Plan of Action and gaps between policy and practice remain major constraints. Moreover, while the Madrid Plan of Action contains a number of references to human rights, it is not a human rights instrument and it addresses ageing issues mainly from a developmental perspective. It has not been designed to comprehensively address existing protection gaps and is therefore not sufficient to ensure the full enjoyment of their human rights by older persons.**

124. **The former United Nations High Commissioner for Human Rights, in her 2012 report on the human rights situation of older persons, concluded that existing arrangements to protect the human rights of older persons were inadequate and that dedicated measures to strengthen the international protection regime were required, such as a new dedicated international instrument and/or a new special procedure mandate (see E/2012/51, para. 66).**

125. **Similarly, the Open-ended Working Group on Ageing concluded at its sixth session, held in 2015, that the existing mechanisms designed to guarantee the full exercise of the civil, political, social, economic and cultural rights of older persons have flaws (see A/AC.278/2015/2, p. 8). A variety of proposals have been made with regard to new instruments and measures, in accordance with the Working Group's mandate, including a dedicated convention or an optional protocol to an existing convention. As the present report and its findings will be brought to the attention of the Working Group, in accordance with Council resolution 24/20, the Independent Expert calls on States to step up their efforts to determine the best way to strengthen the protection of the human rights of older persons and to consider the various proposals that have been made, notably the elaboration of a convention on the rights of older persons. It is also hoped that the Working Group will in due course present to the General Assembly a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which are not currently addressed sufficiently by existing mechanisms and therefore require further international protection, as requested by the General Assembly in its resolution 67/139 of 20 December 2012.[7] Considering that there is unanimity about the need to strengthen the protection of the human rights of older persons, existing divergences must urgently be overcome, given the millions of older persons waiting for their human rights to become a reality.**

126. **The creation of the mandate of the Independent Expert on the enjoyment of all human rights by older persons by the Human Rights Council in 2013 constituted a paradigm shift from a predominant economic and development perspective to ageing to the imperative of a human rights-based approach[8] that views older persons as subjects of law, rather than simply beneficiaries, with specific rights, the enjoyment of which has to be guaranteed by States. It has also kick-started a Geneva-based process that has received new impetus through the recent launching of the Group of Friends on the human rights of older persons. It is hoped that this will contribute to further deepening the discussions at the level of the Human Rights Council and to ensure that this human rights forum remains seized of this important matter and actively engaged in shaping tomorrow's society.**

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[7] Adopted by a recorded vote of 54 in favour to 5 against (Canada, Israel, Seychelles, South Sudan, United States of America), with 118 abstentions.

[8] See the statement of the United Nations High Commissioner for Human Rights to the United Nations System Chief Executives Board for Coordination in New York in October, 2011, entitled "The Tunis imperative: human rights in development cooperation in the wake of the Arab Spring", available at https://interagencystandingcommittee.org/system/files/legacy_files/The%20Tunis%20Imperative%20Pillay.pdf.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Costa Rica

Note by the secretariat

The secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Costa Rica from 9 to 18 May 2016.

The main objective of the mission was to identify both best practices and shortcomings in the implementation of current legislation relating to the promotion and protection of the rights of older persons. In the report, the Independent Expert assesses the implementation of existing international instruments and of laws and policies relating to the enjoyment of all human rights by older persons in Costa Rica. On the basis of the information gathered before, during and after the mission, the Independent Expert analyses the challenges faced by older persons in exercising all their human rights and examines measures to foster the implementation of existing laws and policies that contribute to the promotion and protection of the rights of older persons.

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Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Costa Rica*

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* Circulated in the language of submission and in English only.

I. Introduction

1. Pursuant to resolution 24/20 of the Human Rights Council, the Independent Expert on the enjoyment of all human rights by older persons carried out a mission to Costa Rica from 9 to 18 May 2016. The purpose of the visit was to identify best practices and shortcomings in the enforcement of current legislation on the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert had the opportunity to meet with representatives of the central and municipal governments, non-governmental organizations, older persons and other concerned parties. The Independent Expert wishes to thank the Government of Costa Rica for its invitation and the support it provided throughout the visit. She also wishes to thank the Office of the Resident Coordinator of the United Nations for its valuable collaboration and assistance.

II. Background and context

3. Costa Rica has a population of approximately 4.7 million inhabitants, nearly 9.24 per cent of whom are over the age of 65, a figure which is expected to rise to 11.5 per cent by 2050. Costa Rican society is in the advanced stages of demographic transition, characterized by a narrowing of the base of the population pyramid and an increase in older segments resulting from the combination of a low birth rate and high life expectancy. Women have gone from having an average of 2.12 children in 2003 to 1.76 children in 2014,[1] and life expectancy, which stands at 79 years,[2] is one of the highest in Latin America.

4. However, there are disparities among regions and among groups of older persons. Approximately two thirds of this demographic live in the central region and half live in urban areas.[3] Furthermore, indigenous peoples make up the largest share of the 60-year age group, while persons of African descent are the least represented in that bracket.[4]

5. Costa Rica is a multilingual, multicultural and multi-ethnic society. The latest national census, conducted in 2011, included for the first time a focus on ethnic self-identification: 3 per cent of the population considers itself to be indigenous, 8 per cent black or mulatto and 83 per cent white or mestizo. The diversity of Costa Rica is recognized in the recent constitutional reform, in which the country is described as a democratic, free, independent, multi-ethnic and multicultural republic. The same diversity does not apply to religion insofar as the Constitution establishes Costa Rica as a catholic State.[5] Moreover, although the Constitution establishes Spanish as the official language and guarantees that the State will ensure the continuity and promotion of national indigenous languages,[6] it does not include other minority languages, such as the English Creole spoken by Afro-Caribbean communities, in the administration. The Government has acknowledged

[1] National Statistics and Census Institute, 2011 Census.
[2] State of the Nation Programme (Costa Rica), *Vigésimo Informe Estado de la Nación en Desarrollo Humano Sostenible* (Twentieth report on the State of the Nation regarding sustainable human development), San José, 2014.
[3] *I Informe estado de situación de la persona adulta mayor en Costa Rica* (First report on the situation of older persons in Costa Rica), p. 15.
[4] National policy on a society free from racism, racial discrimination and xenophobia 2014-2025, p. 15.
[5] Art. 75.
[6] Art. 76.

that providing bilingual education in the native tongues of indigenous peoples and persons of African descent is a challenge for the State, a source of discrimination and a barrier to access to public services by minorities.[7] The Independent Expert recommends that the country renew its efforts to remove linguistic barriers faced by older persons.

6. Costa Rica ranks 69th in the Human Development Index. The abolition of the army in 1948 made it possible to fund sectors such as education and health, and there is near universal social security coverage. Nevertheless, one of the main challenges facing the country is the rise in inequality. In 2012, the Gini coefficient was 0.518, above the Latin American average.[8] Also noteworthy is that approximately 30 per cent of older persons live in poverty or extreme poverty.[9]

III. Administrative, legal, institutional and political framework

7. The Government of Costa Rica is headed by a president. Administratively, the country is divided into 7 provinces, which are subdivided into 81 cantons and 463 districts. The cantons are governed, with limited powers, by municipalities, which are headed by a mayor and a municipal council elected by the people. At least 10 per cent of the country's ordinary revenue is channelled towards the municipalities.[10] However, despite political and fiscal decentralization processes, the capacity of municipalities is limited and most governmental responsibilities remain with the central Government.

8. Costa Rica has ratified the main international and regional human rights treaties, as well as those relevant to older persons. The Independent Expert welcomes the fact that Costa Rica has signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and recommends that the Government take the necessary steps to speed up its ratification.

9. However, Costa Rica has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Independent Expert urges the Government to ratify this international instrument to broaden the protection of older migrants, especially given that 9 per cent of the current population was born outside the country, mostly in Nicaragua.[11] The Independent Expert also urges the Government to ratify the Inter-American Convention on Protecting the Human Rights of Older Persons.

10. Despite the fact that Costa Rica has set up the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations and the Standing Body for Consultation with Civil Society, the Independent Expert reiterates the recommendation of the Human Rights Committee to ensure more robust coordination between the various entities with a human rights portfolio, including older persons' affairs, and to assess existing mechanisms for consultation with civil society organizations working on issues of ageing in order to promote their effective participation.[12]

[7] National policy on a society free from racism, racial discrimination and xenophobia 2014-2025, p. 17.

[8] State of the Nation Programme (Costa Rica), *Vigésimo Informe Estado de la Nación en Desarrollo Humano Sostenible* (Twentieth report on the State of the Nation regarding sustainable human development), San José, 2014, p. 372.

[9] Ministry of Planning and Economic Policy, National Development Plan 2015-2018, pp. 139-140.

[10] Constitution, art. 170.

[11] Directorate-General for Migration (Costa Rica), *Migración e Integración en Costa Rica, Informe Nacional 2012* (2012 National Report on Migration and Integration in Costa Rica), San José, 2012.

[12] CCPR/C/CRI/CO/6, para. 6.

11. The Constitution stipulates that international treaties take precedence over domestic laws, while the Supreme Court has ruled that they rank above the Constitution whenever they provide greater rights and safeguards. The Constitution also stipulates that the State will ensure the highest level of well-being for all inhabitants and that families, as a natural and fundamental element of society, are entitled to special protection from the State. That right also extends to mothers, children, older persons and persons with disabilities.[13] The Constitutional Chamber has ruled that the State has a duty to provide special protection for these groups, in particular older persons.

12. In 1999, Costa Rica adopted a specific law on older persons, the Comprehensive Older Persons Act (No. 7935), and implementing regulations, with a view to ensuring that older persons have equal opportunities and a decent living. The Act established a lead agency to deal with ageing-related issues, namely the National Council for Older Persons (CONAPAM).

13. The National Council is attached to the Office of the President, is designated as the lead agency on ageing and old age and is responsible for developing policies to ensure favourable conditions for older persons and for distributing funds for the benefit of older persons.[14]

14. There are various sources of funding for programmes benefiting older persons, the main source being the Social Development and Family Allowances Fund for older persons living in poverty or extreme poverty. Other resources depend on the income from levies on liquor, beer and cigarettes.[15]

15. The Social Welfare Board of San José also plays a significant role in funding programmes on ageing. A percentage of the net profits of the national lottery is distributed among social welfare institutions, including homes and day centres for the care of older persons.[16] The Inter-Agency Institute for Social Assistance also provides funding to cover the expenses of social welfare organizations.

16. The regulation of social welfare services and the setting of operating standards is overseen by various institutions, including the Ministry of Health, the Comptroller-General's Office, the National Council and the Social Welfare Board of San José. The law covers requirements in terms of facilities and human resources, institutional obligations and the audit and regulation of appropriations and the use of financial resources. The function of auditing appropriations and the use of public funds is also spread among institutions, but all public and private entities are required to provide the National Council with the information it requests on the actions they have undertaken and how they have used the public funds allocated to them.

17. Costa Rica has various programmes for older persons. It adopted the National Policy on Ageing and Older Persons 2011-2021 and an action plan that contains the following five main strategic focus areas: social welfare, income and the prevention of poverty; abandonment, abuse and ill-treatment; social participation and intergenerational integration; the consolidation of rights; and comprehensive health care. In 2015, the Government also adopted a bridging strategy on development, which is intended to be a mechanism for the coordination of programmes, projects and actions designed to ensure effective enjoyment by persons living in poverty of the right of access to goods, services and products provided by public and private institutions and organizations at the national level.

[13] Arts. 50 and 51.
[14] Acts Nos. 7972 and 9188.
[15] Act No. 7972.
[16] Acts Nos. 1152, 7342, 7395 and 8718.

18. In addition, the Government has developed the Accessible and Inclusive Country Pledge, whose objectives include improving transport infrastructure, strengthening health insurance, pensions and the public health system, developing an inclusive gerontology plan and putting forward options for family cohabitation that take a rights-based approach and promote the autonomy of older persons with disabilities. The National Development Plan 2015-2018 also covers older persons living in poverty or extreme poverty through the Assistance Programme for Impoverished Older Persons.

19. In order to implement current laws, the National Council has two programmes under way: "Ageing and quality of life" and "Building solidarity". The former consists of awareness-raising and training campaigns carried out in conjunction with academia and of coordinating support networks. Through the latter, the National Council aims to promote financial and technical support for social welfare organizations, staff of care networks and/or local governments with a view to improving operations and self-management.

20. Costa Rica has an Ombudsman's Office that has been accredited as a category A institution under the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and there are plans to set up an Ombudsman's Office for Older Persons.[17]

21. In April 2015, the representatives of the institutions responsible for programmatic actions with regard to older persons and which are members of the National Council's board set up the National Technical System for Comprehensive Care of Older Persons. However, it has been acknowledged that this technical group lacks coordination.[18]

IV. Main findings

A. Discrimination

22. The Constitution safeguards the right to equality and non-discrimination, but without mentioning age. However, Act No. 7935 contains specific provisions prohibiting discrimination on grounds of age and is intended to guarantee equal opportunities and dignity in all spheres, from employment to access to health.

23. Costa Rica has developed targeted policies for the protection of certain groups, such as the national policy on a society free from racism, racial discrimination and xenophobia 2014-2025, but without specifically including the issue of ageing. The target groups include indigenous peoples, persons of African descent, migrants and refugees. The Government has also adopted a new Migration Act and a comprehensive migration policy whose goal is the integration of those population groups in Costa Rican society.

24. Domestic legislation notwithstanding, older persons continue to be discriminated against in various areas such as health, pensions, housing and employment. For some subgroups of this age bracket, in particular indigenous peoples, persons of African descent and migrants, language becomes a barrier when filling out forms in order to receive social benefits, hence the importance of removing linguistic barriers so that everyone may enjoy their economic, social and cultural rights.

25. There are eight indigenous ethnicities or peoples in the county, distributed across 24 territories throughout the country and who speak six indigenous languages. During her

[17] Act No. 7395, art. 69, and Act No. 7319, art. 11.

[18] National Council for Older Persons, *Plan Operativo Institucional. Ejercicio Económico 2016* (2016 Institutional Operations Plan), p. 13.

visit, the Independent Expert was informed that there is no institutional mechanism for prior consultation with or participation by older indigenous persons in decision-making on issues related to their welfare.

26. Costa Rica has recognized the challenges it faces with regard to indigenous peoples by acknowledging that the existence of a favourable judicial framework is insufficient to ensure full protection of the rights of communities if it is not accompanied by State policies and actions which sought its effective application.[19] Accordingly, the Independent Expert recommends that the State redouble its efforts to develop targeted policies in cooperation with the National Council for Older Persons and the National Commission on Indigenous Affairs with a view to ensuring that older persons belonging to the most vulnerable groups enjoy all their rights.

B. Violence and abandonment

27. There were cases of ill-treatment and abandonment of older persons that worried the Independent Expert during her visit, such as persons whose relatives abandoned them in hospital, older persons who used public transport and older persons who did not receive assistance in the home. There are laws and programmes in place to combat violence against older persons, but they are fragmented and their enforcement is dislocated. Act No. 7935 defines violence against older persons and provides for their legal and psychosocial protection by establishing protection measures and making physical and sexual assault and economic exploitation offences punishable with prison. However, the Act does not cover abandonment or neglect or lay down penalties for such acts.

28. The Domestic Violence Act requires the authorities to provide special attention to certain groups, including older persons and persons with disabilities, although it does not include abandonment and neglect in its definition of domestic violence.[20]

29. There are also targeted measures in place to combat violence against women, including the Act Criminalizing Violence against Women,[21] under which a victim's advanced age is an aggravating circumstance of a punishable offence.[22] In addition, the National System for Addressing and Preventing Violence against Women and Domestic Violence has been set up and the National Gender Equality and Equity Policy adopted, with the National Institute for Women acting as the main coordinating entity of the policy.

30. Complaints of ill-treatment can be filed with various bodies, including public prosecutors, domestic violence courts, the police, the National Council for Older Persons, the Ombudsman's Office, the Social Insurance Fund of Costa Rica, the National Institute for Women and the Operational Centre for Assistance to Victims of Domestic Violence, which can be reached through the National Emergency System (911). The National Emergency System has reported a rise in the number of complaints received where the victim is an older person.[23] It should be noted that each entity has its own systems for the registration of cases, provision of assistance and follow-up, which hinders the processing of information by gender and age and, thereby, the adoption of effective measures against ill-treatment and abandonment at the national level.

[19] A/HRC/27/12, para. 63.
[20] Act No. 8925, art. 1.
[21] Act No. 8929.
[22] Ibid., art. 8.
[23] Information provided by the National Council for Older Persons.

31. Regarding the lack of coordination, the Independent Expert was informed of the development of a national scheme on assistance to older persons who are victims of violence for the period 2016-2018, called "Línea Dorada" (Golden Line), to be run by the National Council, with the support of the United Nations Population Fund, but whose adoption remains pending. The scheme would include the establishment of a dedicated office for this age group and a comprehensive assistance system consisting of psychological, emergency, legal counselling and representation, social, inquiry and care services.

32. Thus far, the protection of older persons who are victims of abuse has chiefly been provided by the Care Network. The National Council has developed a programme on assistance and care for persons over 60 who are assaulted and/or abandoned, with the aim of supporting the placement of older persons who are referred by hospitals or the courts or are living in street situations. The Independent Expert was informed of the formulation by the Ministry of Human Development and Social Inclusion of a new national policy on persons in street situations and abandoned persons and recommends its prompt implementation through inter-institutional and intersectoral coordination in order to reduce the number of cases of violence and abuse against older persons.

C. Social welfare and the right to social security

33. The Social Insurance Fund of Costa Rica is the autonomous institution responsible for managing and governing social and health insurance. The State is required to ensure a sufficient income in the event of a shortfall, in keeping with the Constitution.

34. The national pensions system is based on four pillars: the basic contributory pension, which is made up of compulsory contributions managed primarily by the disability, old-age and death scheme of the Social Insurance Fund of Costa Rica, the Pension and Retirement Fund of the Judiciary and the Education System Pension Board; the compulsory complementary pension, which is registered and controlled by the Social Insurance Fund and managed by various operators of complementary pensions; the voluntary complementary pension; and the non-contributory scheme.

35. The non-contributory scheme is managed by the Social Insurance Fund and provides support to persons who have not contributed or paid into any scheme. The following categories of people have a right to this support: persons over 65, persons under 65 with a disability that prevents them from working, widows between the ages of 55 and 65 who are in financial difficulty or who have children under 21 who are students or unemployed, and the destitute. The amount of the allowance is 75,000 colones (approximately US$ 140), and the scheme is part of the strategy to combat extreme poverty under the Development Plan. Indigenous peoples are the population group most represented among recipients of the scheme, which could point to a deterioration of their quality of life and poverty in old age.[24]

36. The Independent Expert is concerned at reports she received regarding the administrative process for obtaining the allowance under the non-contributory scheme. The saturation of the system, the complexity of the forms and long waiting lists in order to choose the scheme are among the obstacles encountered by older persons in actually obtaining the allowance. The Independent Expert was informed that the lack of local bank branches from which to withdraw the allowance means that a large portion was spent on the journey to withdraw it. Moreover, there are complaints of misappropriation of the allowance by the older persons' own relatives, who often make the trip to withdraw it.

[24] National policy on a society free from racism, racial discrimination and xenophobia 2014-2025, p. 23.

37. The non-contributory scheme has helped older persons to be more autonomous and financially independent from their relatives, especially in cases where they had worked in the informal sector or as domestic workers without social security coverage, as is the case of many women. Nevertheless, the Independent Expert was informed that a quarter of older persons are the sole breadwinners of the household and that, in households that include older persons, nearly 80 per cent of the heads of household are over 65. It is crucial to gather data on this situation with a view to identifying cases of misappropriation of wealth and taking appropriate action.

D. Adequate standard of living, autonomy and access to justice

38. Costa Rica has increased public investment in education, health and social programmes, with social spending rising to 2.5 per cent of gross domestic product. However, the Independent Expert is concerned about the fiscal deficit and hopes that spending cuts are not having a negative impact on investment in social programmes for older persons.[25]

39. The Constitution protects the right to work while Act No. 7935 addresses non-discrimination on grounds of age in the labour market and stipulates that all older persons should have the opportunity to engage in income-generating activities. Thus far, the Ministry of Labour and Social Security has piloted job fairs entitled "Intégrate al Trabajo" (Join the Workforce), and workshops on empowerment, entrepreneurship and business plans have been run in coordination with the National Training Institute.

40. These measures are clearly inadequate considering that nearly 85 per cent of older persons are inactive because they are retired, have never been part of the workforce or have given up the job search. The remaining 15 per cent are in the workforce, mainly in the agricultural and informal sectors.[26] The lack of a national policy to promote the right to work of older persons is a factor that prevents this demographic from continuing to contribute to the country's economic and social development if they so choose.

41. In addition, according to the 2011 census, home ownership figures show that most older persons live in their own homes. The indigenous population has the highest rate of home ownership. However, their homes are in average or poor condition. The worst figures are those on persons of African descent and migrants, who for the most part live in rented accommodation that is in derelict, poor or average condition.

42. The State has adopted regulations on the processing of family housing grants for older persons without a family. The National Council decides who qualifies as a "single older person" for the purpose of the grant. Although this programme is in effect, the public needs to be made aware of it and the administrative process for obtaining the grant should be streamlined. The programme also needs to be expanded so that older persons may enjoy accessible social housing or be in a position to retrofit their homes to improve access and ensure their autonomy and independence.

43. Current legislation sets special rates for older persons who use public transport. Specifically, there is no fare for distances of under 25 km and a preferential fare is applied to longer journeys. The Independent Expert was informed that the National Training Institute runs training programmes for bus drivers on the topics of ageing, old age and decent treatment in relation to public transport. Nevertheless, the Public Transport Council

[25] Financial bulletins of the Ministry of Finance, 30 May 2016, available at http://gobierno.cr/gobierno-reduce-gasto-por-mas-de-%E2%82%A125-800-millones/#more-15792.

[26] Information provided by the National Council for Older Persons.

and the Ombudsman's Office regularly receive complaints of infringements of this right, including charging the incorrect fare and refusing to let older persons on to the bus.

44. Act No. 7935 does not define the term "autonomy" and barely mentions the concept among the rights of residents and users of private institutions. The Independent Expert observed infantilizing practices in day centres and health-care facilities and recommends that clear measures be taken to realize the right of persons in this group to make decisions on all aspects of their lives, including property, place of residence and health, and to make a life plan in keeping with their beliefs and traditions. The recently adopted Act on Personal Autonomy for Persons with Disabilities contains guidance that could apply to older persons with disabilities.

45. Regarding access to justice, the judiciary has taken on board the Brasilia Regulations Regarding Access to Justice for Vulnerable People and set up the National Commission on the Administration of Justice, which is responsible for providing support to vulnerable groups, including older persons, persons with disabilities, migrants and refugees. Current legislation notwithstanding, a national information strategy is lacking to inform older persons of the steps taken by legal offices to provide priority processing and assistance for their demographic, such as identifying the case files of older persons using terracotta coloured folders.

E. Care

46. The Costa Rican health-care system provides nearly universal coverage. Approximately 97 per cent of older persons have health insurance despite the fact that only 80 per cent of them have some form of income, though many of them get their health insurance indirectly through a family member.[27] The Social Insurance Fund of Costa Rica has been the institution responsible for providing public health-care services since the 1970s, after taking over from the Ministry of Health, which is tasked with monitoring the execution of essential health-care functions and ensuring sectoral governance.

47. The health-care system provides three levels of care. The first consists of health posts, centres and clinics, which have Basic Comprehensive Health-Care Teams (EBAIS) and serve about 94 per cent of the population. Even though there are 43 such teams who provide care to the indigenous and migrant population and doctors and social workers conduct visits in remote areas,[28] the Independent Expert observed that in some regions, such as Valle de Estrella, the indigenous communities do not receive the necessary care. She was informed that when indigenous persons do go to the nearest Basic Integrated Health-Care Teams, it is in emergencies and that many do not turn to health-care outposts for a variety of reasons, including difficult access, lack of transport, opening hours that do not take into account the distance and geographic situation of these communities and cultural considerations.

48. The second level consists of clinics, peripheral hospitals and regional hospitals that provide specialized consultations and medical and surgical treatment and admit patients. The third level consists of national general and specialized hospitals, including one geriatric institution, the Dr. Raúl Blanco Cervantes National Geriatric and Gerontology Hospital. This facility aside, the Independent Expert is concerned at the long waiting lists for some of the vital services for older persons, such as ophthalmology and general and orthopaedic surgery, and at the lack of 24-hour emergency care. The waiting lists are part of a structural

[27] *Idem*

[28] Social Insurance Fund of Costa Rica, bulletin, April 2012.

problem that limits or hinders older persons' access to health on a preferential basis and has led the Social Insurance Fund of Costa Rica to set up a dedicated technical unit.

49. Costa Rica has been building up postgraduate programmes in geriatrics and gerontology since the 1990s, resulting in the establishment of a geriatric ward in almost all of the regional hospitals.

50. The Social Insurance Fund also runs a variety of programmes for older persons, including the Comprehensive Assistance for Older Persons Programme, which deals with self-care and healthy lifestyles, and the programme to provide preferential administrative, pharmaceutical, laboratory, hospital and emergency services. There are also social services, such as the Golden Citizens Programme, which consists of classes on better living, training for caregivers and home care. Aside from the services, initiatives and information provided by various entities, there is no specific national programme to support and train informal caregivers. This is of particular concern in the situation of centenarians whose caregivers are relatives who are elderly themselves.

51. There are approximately 10,000 inhabitants over the age of 90 in Costa Rica, 5 per cent of whom are over 100. The Nicoya region has one of the highest longevity rates in the world. The Independent Expert observed that this phenomenon is related to culture, mode of living, diet, lifestyle and standard of living. Nevertheless, she expressed concern at the situation of centenarians who do not receive State support to help them through the administrative procedures for obtaining home or outpatient care and training for informal caregivers.

52. Costa Rica has rolled out a programme called Progressive Assistance Network for the Comprehensive Care of Older Persons, which is designed to offer a wider choice of options for socially vulnerable older persons living in poverty through the coordination of actions by a community network made up of older persons, families and civil society organizations providing home care or services in long-term care homes, day centres, foster families and community homes and/or housing. The National Council for Older Persons finances part of the cost of accommodating older persons living in poverty or extreme poverty in long-term care homes or day centres, most of which are privately run.

53. The Independent Expert commends Costa Rica on being the first Latin American country to adopt an integrated national plan on Alzheimer's and other related forms of dementia for the period 2014-2024 and recommends that the plan be effectively implemented and publicized at the local level.

54. The Social Insurance Fund of Costa Rica has a network of clinics that provide pain management solutions and palliative care. In the capital, there is a centre for pain treatment and management that offers specialized care to terminal patients and persons with chronic or acute pain. Palliative care has also been recognized as a specialty; certified doctors hold the title of palliative medicine specialists.

F. Education, training and lifelong learning

55. The constitution establishes equality of opportunity for older persons in access to education.[29] More specifically Act No. 7935 provides for a range of measures to promote access for older persons to university courses and study facilities. Nonetheless, specific programmes need to be developed to reduce illiteracy among older persons, particularly in rural areas and indigenous territories.

[29] Article 83.

56. Costa Rica provides institutional programmes, such as the institutional programme for adults and older persons of the University of Costa Rica, for older persons. Other lifelong learning programmes are also provided by the Ministry of Education and the National University. However, broader opportunities should be provided to enable older persons fully to develop their potential, and it is recommended that courses offering access to information technology and computing be provided.

G. Participation and inclusion in society

57. The governing body of the National Council for Older People (CONAPAM) comprises representatives of civil society who work with older persons, among them the Costa Rican Association of Gerontology, associations of pensioners and the Federation of the National Crusade for the Protection of the Elderly. It is important that older persons take an active part in drafting and implementing policies that affect their well-being.

58. There are also advisory forums which older persons may consult for advice on matters that affect their lives and which are part of the Citizens' Monitoring and Oversight Committee. These forums need more logistic and financial support in order for them effectively to participate.

59. There are also non-governmental organizations that encourage voluntary participation by older persons; they include the network of clubs run by the Costa Rican Association of Gerontology.

60. It is essential to strengthen the role played by civil society in respect of ageing and in working with the elderly, and to build up cross-generational programmes such as those of the Pensions Board of the national education system, which endeavours to develop an understanding of the ageing process and of old age among pupils in basic education.

V. Conclusions and recommendations

A. General comments

61. **The Independent Expert commends the Government of Costa Rica for its commitment to promoting and protecting the rights of older persons by the adoption of a broad legal, institutional and political framework to guarantee that older persons are able fully to exercise their human rights.**

62. **Seventeen years after the adoption of Act No. 7935, the almost universal coverage provided by health services and the budgets assigned to welfare services represent significant steps forward in a society that is rapidly ageing. The existence of the non-contributory pension ensures that a large proportion of older persons receive a minimum income that allows them to be autonomous, which is the key to growing old with dignity.**

63. **However, the ageing of Costa Rican society is marked by regional disparities; they are determined by the social and economic inequality that affects certain groups of the elderly, principally those who belong to communities that are indigenous or of African descent and migrant communities. Such asymmetry is also apparent in metropolitan urban areas with a high level of economic development, as well as in rural and coastal areas and areas on the borders.**

64. **In spite of the efforts made, the Independent Expert considers that one of the major challenges that remain is the implementation of the national norms that have**

been adopted in order to comply with international obligations and commitments in respect of older persons. Initiatives taken at the central level are scattered and overlap each other, hindering the attainment of the objectives set by laws and programmes on ageing at the municipal level.

65. In order for solutions to be found which promote the implementation of existing norms, it is fundamental for the State to acknowledge the challenges faced by older persons and for discriminatory attitudes towards them to be eliminated. In spite of the clear commitment on the part of the State to promote inter-agency coordination, and a multisectoral human-rights based approach, the lack of coordination and of cooperation between the different government bodies and agencies continues to present a significant challenge to the effective implementation of Act No. 7935 and its enabling regulations, as well as to existing policies and programmes on ageing.

66. The Independent Expert acknowledges the effort made by the National Council for Older People in its role as the guiding body for policies relating to the rights of older persons, and underscores the need for all ministries and all levels of government to apply existing legislation so as to ensure that older persons are able to exercise their rights. The Independent Expert commends the Government of Costa Rica for having adopted a range of programmes and policies, such as the National Policy on Ageing and Older Persons 2011-2021, which adopts a human rights-based approach. Nevertheless, specific measures covering the wide diversity of older persons need to be introduced in order effectively to ensure their independence, their right to work and to health.

67. The Independent Expert urges the Government to spare no effort in developing programmes on accessibility, safe environments and friendly cities, and that it adopt a programme on resilience for older persons in situations of risk, emergency or disaster.

68. The Independent Expert urges Costa Rica to ratify all the human rights instruments to which it is not yet a party, and in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Inter-American Convention on Protecting the Human Rights of Older Persons.

69. On the basis of these conclusions and of the comments made in the report, the Independent Expert makes the following recommendations.

B. Recommendations to the Government

1. Awareness-raising and training

70. The Independent Expert reiterates the value of conducting public-information campaigns to bring about a change in attitudes towards older persons, to counter myths and stereotypes about ageing at all levels of society and to foster inclusion, social cohesiveness and respect for a diversity of cultural values. It is essential to organize campaigns to raise awareness and appreciation so as to promote a dialogue across generations and which takes into account the multilingual, multicultural and multi-ethnic diversity of this age group, and to combat all forms of racial discrimination, xenophobia and all other forms of intolerance. Existing international instruments should be disseminated and made available to the public. Relevant national legislation, in particular Act No. 7935, should also be disseminated via national awareness-raising campaigns to inform older persons, and in particular those

who are marginalized and who live in remote areas, of their rights and of the means by which they may seek their enforcement.

71. It is essential to adopt a strategy to raise awareness about the issues of ill-treatment and abandonment, via campaigns to raise awareness and to provide information using media whose audience is made up of older persons and persons in their social environment, such as their family, friends and informal carers, as well as of those responsible for homes and public and private institutions, physicians, nurses, carers, public-transport drivers and the community at large. Efforts to raise awareness must be complemented by mandatory education and training seminars for judges, lawyers and other members of the judiciary, and for representatives of the local authorities, the Social Insurance Fund of Costa Rica, the police, the mass media, non-governmental organizations and other bodies involved with ageing and older persons.

2. Institutional structure and participation

72. The Independent Expert recommends that the Inter-Institutional Commission for the Monitoring and Implementation of International Human Rights Obligations be provided with sufficient means to perform its tasks; these should include the necessary financial, human and material resources, and should guarantee that the Standing Body for Consultation with Civil Society is fully operational. The rights of older persons should constitute one of the leading focuses of this institution.

73. The Independent Expert recognizes the efforts made by the State to encourage an inter-institutional approach to developing and implementing policies, plans, programmes and projects on ageing. She takes note with satisfaction of the 2013 Act to strengthen the National Council for Older Persons (CONAPAM), which assigns to CONAPAM 2 per cent of the overall revenue of the Social Development and Family Allowances Fund. However, CONAPAM is top-heavy and highly centralized in the capital, making it difficult for it to carry out and monitor the implementation of local programmes for older persons. It is recommended that CONAPAM undergo a process of decentralization and devolution, and that it be given budgetary autonomy and the human and material resources necessary to set up regional offices or regional inter-institutional liaison committees wherever it deems it to be necessary.

74. The Ombudsman's Office plays a vital role in disseminating and promoting the rights of older persons. It is urgent that it be assigned the necessary financial and human resources to enable its Office for the Protection of Older Persons, which currently has but one representative, fully to perform its role. The Independent Expert urges the Government to take the necessary steps to enable that Office to provide assistance to older persons and to ensure non-discrimination and the provision of preferential treatment for older persons in State institutions and public services, including sufficient financial, human and material resources.

75. The Independent Expert recommends that the body for consultation with civil society be reinforced so as to enable it to ensure that older persons are able effectively to take part in taking decisions that affect their lives, as should the Standing Body for Analysis and Proposals relating to Public Policies for Old Age, Ageing and Older Persons. It is also necessary to strengthen organizations for older persons and civil society organizations involved in issues relating to ageing.

3. Studies and statistics

76. The Independent Expert recommends that Costa Rica conduct an updated study into the situation of older persons in order to pinpoint the trends and challenges

that currently affect them, and in particular older women and women who live in rural and remote areas, women who belong to indigenous populations, populations of African descent, migrant, refugee and undocumented populations and lesbian, gay, bisexual, transgender and intersex persons. The study will be a vital tool for discussing and analysing the challenges posed by the ageing population and for developing specific public policies which improve the living conditions of these groups, which lack visibility. The Independent Expert also stresses the need to ensure that older persons are included and effectively participate in meetings and consultations which concern them.

77. **The Independent Expert recommends that statistics, broken down by age, gender, disability and ethnicity, be systematically and regularly collected. Data collection and analysis must comply with international standards on data protection and the right to privacy.**

78. **The Independent Expert recommends that the information, follow-up and evaluation System be consolidated using statistical indicators, with a view to ensuring that the institutions concerned provide periodic information on their programmes, projects and activities so as to permit monitoring and measurement of their level of compliance in respect of ageing.**

4. Discrimination

79. **The Independent Expert underscores the need to redouble efforts in order to combat discrimination on grounds of age, which particularly affects certain communities and ethnic groups, such as older persons who are indigenous, of African descent, migrants or undocumented. She also draws attention to the importance of revitalizing the native languages of older persons so as to do away with linguistic barriers to equality and to the exercise of all their rights.**

80. **It is important to draw attention to issues of equality and to bring about a change in societal attitudes and beliefs so as to dispel prejudice towards particular groups of older persons. The Independent Expert urges the Government to undertake affirmative action on behalf of all marginalized groups in order to correct existing disequilibria. Some indigenous peoples consider older persons to be a source of wisdom, and it is they who take decisions on behalf of the community; accordingly, the Independent Expert recommends that the State adopt specific measures to protect and promote the rights of these groups. She also recommends the implementation of the recommendation made by the Human Rights Committee in respect of the adoption of the draft legislation on the autonomous development of indigenous peoples,[10] and of a legal mechanism to ensure that indigenous peoples are consulted before any decisions are taken that might affect the exercise of their rights. The adoption of that draft legislation and of the mechanism for consultation should make provision for participation by indigenous older persons, on account of the need for effective channels of communication and for representation of this age group.**

5. Violence and abandonment

81. **The Independent Expert recognizes that despite the adoption of legislative and political measures to combat ill-treatment, the issue is still cause for deep concern. The State should increase its efforts to combat attitudes that tolerate abandonment and other forms of ill-treatment, by means of campaigns to raise awareness of existing legislation and to provide information on and prevent violence, misappropriation of**

[10] CCPR/C/CRI/CO/6, para. 42.

wealth and abandonment, to ensure accountability and to make sure that victims have access to effective remedies.

82. **Act No. 7935 and the Domestic Violence Act represent essential legislation for protecting older persons from ill-treatment and abuse. However, the legislation does not fully encompass all forms of violence against older persons, and as a result it is not possible properly to detect it. It is necessary to adopt, or to amend legislation so as to more fully take into account violence against older persons, including abandonment, and significantly to increase penalties for those guilty of any form of ill-treatment of older persons.**

83. **Protocols and procedures need to be introduced to assist individuals, families, friends, social workers, carers in institutional settings and community groups to understand the problems related to abuse and abandonment, to identify individuals at risk and to provide a response when appropriate. Both formal and informal carers should be trained to prevent and detect the different types of ill-treatment of older persons.**

84. **The Independent Expert recommends that the State develop specific training and education programmes for judges, lawyers, prosecutors, police officers and health and social service officials in order to ensure that cases of violence, abandonment and neglect are considered serious offences and are treated as such.**

85. **The State should introduce a complaints procedure in order to collect disaggregated data on the violence and abandonment suffered by persons in institutions or in private or public premises, in coordination with all the agencies concerned and in particular with the National Institute for Women, the National Commission for Indigenous Affairs, the National Council for Older Persons, the Social Insurance Fund of Costa Rica, the Ministry of Health, the Public Transport Council and the Ombudsman's Office. Victims of violence should be afforded legal assistance and support and mechanisms should be introduced to prevent reprisals, especially in cases in which a family member is responsible for the ill-treatment or violence.**

86. **Older women and older persons with disabilities are more likely to be victimized; accordingly, a gender and disability perspective should be incorporated into any measure designed to raise awareness of and to detect abuse of older persons.**

87. **The Independent Expert recommends the drafting of a single law comprehensively to regulate, authorize, determine the operation of and define disciplinary measures and care protocols for organizations providing services for older persons.**

6. Social protection and the right to social security

88. **Pension and social security systems are essential to the well-being of older persons. The Independent Expert nevertheless expresses her concern about the long-term sustainability of these systems and urges the Government to conduct a study into the management of pension schemes in order to identify managerial and planning problems; it should also develop a plan of action to simplify procedures and reduce time limits for the award of pensions and draw up a forecast of the amount necessary to meet applications for pensions in the long term.**

89. **The Independent Expert reiterates the importance of the non-contributory regime as a means of reducing extreme poverty among older persons and calls for the elimination of obstacles preventing people from receiving these benefits; this requires the simplification of administrative formalities and the provision of assistance in**

completing the required forms and documentation, especially for older persons with disabilities, who are illiterate or who live in rural and remote parts of the country.

7. A proper standard of living, autonomy and access to justice

90. The Independent Expert recognizes that Costa Rica has one of the highest human development indices in the region. However, fresh measures need to be adopted in order to reduce poverty among older persons, including among the most vulnerable groups such as indigenous groups and those of African descent. She encourages the Government to pay particular attention to the situation of older persons in indigenous territories, and in particular to adopt effective measures to combat poverty during old age in order to ensure that older persons possess food, access to housing and satisfactory health to enable them fully to exercise their human rights.

91. The Independent Expert recognizes the efforts made to ensure the right to proper housing. Nevertheless, she draws attention to the need to promote accessible housing without barriers so that older persons may be less dependent, and to make available alternative types of housing. Older persons are entitled to live where they choose and, wherever possible, they are entitled to measures to rehabilitate and adapt their homes to improve accessibility for older persons.

92. As regards the current legal order, the Independent Expert urges the Government to adopt legal measures and specific policies to guarantee the right of older persons to work, via employment exchanges, incentives for public and private employers, the implementation of flexible working arrangements such as phased retirement schemes, access to soft loans for entrepreneurial projects and volunteer programmes. Older persons have a great deal to contribute on account of the experience they have garnered throughout their working lives, and they should be encouraged to go on working if they so wish. Such measures will help to strengthen social cohesion and relationships between older persons and other members of society.

93. Existing legislation on the rights of older persons does not address the question of their autonomy. The Independent Expert recommends that current law be amended so as to fully and broadly guarantee autonomy. This implies affording recognition to older persons as having legal personality and recognizing their capacity as such to demand respect for their wishes and preferences; this will enable them to give free and informed consent. Older persons should be consulted on any decisions that affect their well-being and safeguards should be introduced in respect of free and informed consent, via laws, policies and administrative procedures that comply with international and regional norms. Particular attention should be given to older persons who are illiterate, who have received a limited education or have a disability.

94. As regards access to justice, information campaigns on access to justice should be conducted; these should also be translated into indigenous languages and include standard protocols on assistance that have been developed by coordination among institutions, to provide preferential and priority assistance to older persons. It is also recommended that an assessment be made of the measures implemented to identify the challenges, to produce data and to encourage the necessary changes to the care of older persons. Notwithstanding the existence of legal consultations in universities and of legal advice centres, the Independent Expert recommends the adoption of measures to guarantee free legal assistance for older persons in all administrative and legal matters.

95. The Independent Expert recommends that the State adjust its legislation to ensure that existing public buildings are adapted to the needs of older persons and

that any existing barriers are removed. The State should provide premises that are accessible and completely free of any impediments and it should endeavour to eliminate existing obstacles by revising building control and urban planning legislation and incorporate universal design norms for public services. It is essential for engineers and architects to be made aware of the role played by their professions in ensuring that older persons are able to exercise all their human rights. The Independent Expert recommends that architects, engineers and urban planners incorporate a human rights-based approach into the design of public and private building.

96. Means of transport affect the mobility of older persons, making it essential effectively to implement existing norms which guarantee free carriage or carriage at reduced rates for older persons on public transport, including on coastal shipping lines and railways. Training programmes on the rights of older persons for municipal transport drivers should also be further developed. In addition, further measures are required to improve pubic highways and roads and to press ahead with initiatives relating to accessible public transport.

97. The Independent Expert points out that the impact of climate change and the implementation of policies to adapt to and mitigate climate change should be given priority and that the Government must adopt a policy of climate resilience that takes into account the needs and health of older persons. There is a need to conduct an in-depth assessment of and to map groups of persons in vulnerable situations, including older persons who live in volcanic areas. Planned relocation calls for national legislation to protect the rights of the older persons affected, on the basis of the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters of the Inter-Agency Standing Committee, the Peninsular Principles on Climate Displacement within States and the Sendai Framework for Disaster Risk Reduction 2015-2030.

8. Care

98. The Independent Expert recognizes the efforts made by the Government in setting up the Care Network for Older persons. However, care in the family is the preferred choice of many older persons and there is a need for appropriate parallel assistance to help family members and other informal carers. The Independent Expert recommends that home assistance and home-based medical services be expanded to provide comprehensive assistance, with a particular focus on the country's centenarians. Women too require special attention, as they are the main care providers for families, and recognition is also due for the work of informal carers, who should be entitled to social security.

99. The Independent Expert recognizes the efforts made by the Government to expand the offer of health services, with health posts providing periodic check-ups and premises for Basic Comprehensive Health-Care Teams. Nevertheless, the Independent Expert urges that specific measures be adopted to facilitate access to the right to health and to welfare benefits by populations living in isolated areas and indigenous territories. The State should considerably expand its action on behalf of promotion, prevention and rehabilitation and should adapt indicators and benefits to take account of the actual circumstances and customs of these populations during old age.

100. The Independent Expert recommends that the State reinforce quality control mechanisms and mechanisms to ensure effective and transparent accountability in respect of both public and private provision of care, taking into account the evaluations made by older persons themselves. This requires agreement on clearly

defined principles, including codes of conduct and of practice, together with the provision of training for professionals to enable them to evaluate and verify compliance with the principles, both in the homes of older persons and in institutions accommodating them.

101. Regulation of the care provided by private institutions is important, as is a review of inspection mechanisms with a view to improving the quality of care provided in these institutions. The Independent Expert advises the Government to have quality control and monitoring carried out by properly trained inspectors and to set up a registration unit and inspectorate to detect any illegally operated care homes.

102. Whenever older persons live in homes or establishment that provide them with care or treatment, the State should ensure respect for the diversity of needs, diets, beliefs or religions, together with the right to privacy. Particular attention should be given to the diversity of older persons living in these establishments, to ensure respect for cultural and religious diversity and sexual orientations.

103. The Independent Expert commends Costa Rica for recognizing geriatric medicine as a subcategory of specialized medicine in university curricula and for ensuring that geriatric physicians are present in almost all the country's hospitals. She furthermore encourages the country to expand such courses to ensure that sufficient qualified geriatric specialists are available in all the country's provinces. Geriatric units should be set up in all hospitals in order to guarantee comprehensive care for older persons with the aim of optimizing their quality of life and functional capacity.

104. The Independent Expert commends the Government for the presence of a geriatric hospital in the capital city and draws attention to the importance of providing a round-the-clock emergency service to cover demand from a rapidly ageing society.

105. Notwithstanding the efforts made Social Insurance Fund of Costa Rica in attempting to eliminate long waiting lists, by measures such as providing care in the evening and performing outpatient surgery, the Independent Expert is particularly concerned about waiting times, which may run into years, for medical examinations and consultations. She recommends that the Fund adopt urgent measures, such as the introduction of electronic files and digital agendas, to solve the problem.

106. The Independent Expert urges the Government to make palliative care more widely available, especially for those in the terminal phase of chronic illness, so as to spare them avoidable pain and allow them to die with dignity.

107. The Independent Expert welcomes with satisfaction the National Plan for Alzheimer's disease and recommends that it be effectively implemented in health services and disseminated in homes, shelters and other care centres attending to the specific needs of older persons with dementia.

9. Education, training and lifelong learning

108. In view of the intensity of ageing, additional measures are called for to encourage active ageing and to reduce illiteracy among older persons and especially among those belonging to indigenous populations and populations of African descent.

109. Promotion of lifelong learning is essential in order to enable older persons to cope with ever-changing circumstances and to ensure they are able actively, autonomously and independently to participate in society. While recognizing the availability of a wide range of educational and cultural programmes for older people, including those in day centres, further measures are called for to encourage lifelong learning, covering access to new technologies, in order to narrow the generation gap

and avoid older persons being dependent on others through lack of knowledge of information and communication technology.

C. Recommendations to the international community

110. The international community has a valuable role to play in providing assistance to and cooperating with the Government of Costa Rica to ensure the full implementation of existing international and regional instruments relating to older persons. In conjunction with non-governmental organizations and civil society actors, the international community is capable of analysing the challenges faced by Costa Rica in order to guarantee the full exercise by older persons of all their rights, of helping to identify and evaluate good practices and any shortcomings in the implementation of current legislation. The development of dialogue and active participation by all actors contribute towards better integration of a human-rights based approach into government programmes.

111. The Independent Expert recommends that the United Nations country team, in cooperation with the Regional office of the Office of the United Nations High Commissioner for Human Rights, designate a focal point to coordinate issues relating to the human rights of older persons and to cooperate with international organizations, regional human rights mechanisms, United Nations agencies, non-governmental organizations, civil society organizations, national institutions and academia to provide follow-up to and to promote the implementation of measures which help to promote and protect the human rights of the country's older persons.

D. Recommendations to business

112. The Independent Expert is concerned about the direct and indirect discrimination against older persons, which goes hand in hand with other forms of discrimination such as gender-based discrimination, discrimination on grounds of disability, origin or membership of an ethnic, religious or linguistic minority or on any other grounds. The Independent Expert takes the opportunity to remind businesses that they should comply with international norms in order to prevent, inter alia, all forms of discrimination, and that they should comply with the Guiding Principles on Business and Human Rights which provide guidance for businesses on contracting services. She also takes the opportunity to draw the attention of the Government to its obligation to ensure respect, protection and compliance with human rights in the sphere of business activities by public or private enterprises, and to the need to adopt appropriate legislation and regulations in conjunction with supervision, investigative mechanisms and mechanisms to ensure accountability ir order to establish and ensure compliance with norms for business activities. Particular attention should be directed to the award of credit, loans or mortgages to older persons by financial services, and to the circumstances in which migrant older persons are hired in Costa Rica.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the Right to Development on its seventeenth session (Geneva, 25 April – 3 May 2016)

Chair-Rapporteur: Zamir Akram (Pakistan)

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I. Introduction

1. The Working Group on the Right to Development was established pursuant to Commission on Human Rights resolution 1998/72, with a mandate to monitor and review progress made in the promotion and implementation of the right to development, as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; to review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and to present for the consideration of the Commission a sessional report on the deliberations of the Working Group, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the implementation of the right to development and suggesting possible programmes of technical assistance at the request of interested countries, with the aim of promoting the implementation of the right to development.

2. In its resolution 30/28, the Human Rights Council decided to convene a two-day formal meeting of the Working Group, after the seventeenth session, to consider the report of the Chair-Rapporteur containing standards for the implementation of the right to development (A/HRC/WG.2/17/2).

3. The Working Group convened its seventeenth session in Geneva from 25 April to 3 May 2016.

II. Organization of the session

4. In her opening statement,[1] the Deputy United Nations High Commissioner for Human Rights noted that, although the thirtieth anniversary of the Declaration on the Right to Development was overshadowed by many crises facing the world, there were also signs of hope. The 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda and the Paris Agreement on climate change gave new impetus to the realization of the right to development, for which the international community had to be made accountable. Despite record economic growth, millions of people had been left behind or left out. The progress made towards the realization of the right to development was uneven. Persistent poverty and deepening inequalities were major threats to development, human rights and peace and security. Violence – in the Syrian Arab Republic, Iraq, Burundi, Ukraine and Yemen – was destroying the hard won gains of development, killing hundreds of thousands of people and forcibly displacing millions from their homes. This was an issue that also fell within the reach of the right to development, a right that offered much-needed prevention: it could address root causes, and help to meet structural challenges at all levels, including at the international level, where some of those challenges originated. The year 2016 was a special one, as the international community celebrated both the thirtieth anniversary of the adoption of the Declaration on the Right to Development and the fiftieth anniversary of the International Covenants on Human Rights. The Declaration was a milestone in reuniting the rights contained in the two covenants, in underlining the universality, indivisibility, interdependence and interrelatedness of all human rights. Central to the right to development was also the full realization of the right of peoples to self-determination, a

[1] The full text of the statement is available from www.ohchr.org/EN/Issues/Development/Pages/17thSession.aspx.

right that figured prominently as the first article in both covenants. Like the Declaration itself, the 2030 Agenda for Sustainable Development determined "to leave no one behind" starting with those "furthest behind". The international community pledged to ensure that the sustainable development goals and targets were met "for all nations and peoples and for all segments of society". The 2030 Agenda should not be stunted by indifferent action, malnourished by failed commitments or denied safe passage to its fullest realization just because of the inconvenience of what undoubtedly were its tough but necessary demands.

5. At its first meeting, on 25 April 2016, the Working Group re-elected by acclamation Zamir Akram (Pakistan) as Chair-Rapporteur. In his opening statement, the Chair-Rapporteur assured the Working Group of his dedication and commitment to make every effort to ensure that the Working Group continued to make progress in the fulfilment of its mandate. He was particularly honoured by the Working Group's confidence in entrusting him the task of drafting standards for the implementation of the right to development. He was confident that the Working Group would again make good progress in the current year. He was determined to move forward under the Working Group's collective guidance, in a constructive spirit and with a focus on common ground. The thirtieth anniversary of the adoption of the Declaration on the Right to Development and the commencement of the implementation of the Sustainable Development Goals provided hope, and reminded all of their collective responsibility to deliver on the promise of a better life for the millions of people around the world who lacked access to basic goods and whose most basic needs were not being met. The Chair-Rapporteur referred to information that highlighted some of the obstacles to the realization of the right to development, but that also gave reason for hope. The adoption of the Sustainable Development Goals had resolved the controversies over the right to development, constituting a comprehensive framework for development that was accepted universally. The 17 goals included all the crucial elements of the right to development, such as ending poverty and hunger, ensuring healthy lives, inclusive and equitable education, achieving gender equality and the empowerment of women, and promoting inclusive and sustainable economic growth, full and productive employment and decent work for all. Of particular importance was Goal 17 concerning the means of implementation and the global partnership for sustainable development, which should be read together with the Addis Ababa Action Agenda.

6. The Working Group subsequently adopted its agenda (A/HRC/WG.2/17/1) and programme of work.

7. During the session (see annex for the list of attendance), the Working Group considered the consolidated report of the United Nations High Commissioner for Human Rights on the realization and implementation of the right to development (A/HRC/30/22), engaged in an interactive dialogue on the 2030 Sustainable Development Agenda in the context of the right to development, continued the second reading of the draft right to development criteria and corresponding operational sub-criteria, and considered the report of the Chair-Rapporteur containing standards for the implementation of the right to development (A/HRC/WG.2/17/2).

III. Summary of proceedings

A. General statements

8. Speaking on behalf of the Non-Aligned Movement, the Islamic Republic of Iran expressed the view that the realization of the right to development was more necessary than ever. Three decades had passed since the adoption of the Declaration on the Right to Development; on the eve of its thirtieth anniversary, the international community had to

show its solidarity to achieve common goals, including those in the 2030 Agenda for Sustainable Development. The right to development was central to the implementation of the 2030 Agenda, to which the international community should pay particular attention. All human rights were interrelated and interdependent. At the same time, the realization of the right to development faced many challenges and obstacles, including the political impasse within the Working Group. While States had the primary responsibility to ensure development and favourable conditions, and the duty to take steps to achieve the full realization of the right to development, appropriate means were required to foster comprehensive development and international cooperation. The Movement noted that the ongoing review of the draft right to development criteria and operational sub-criteria should move towards a legally binding instrument to make the right to development a reality for all.

9. The European Union strongly supported sustainable development and eradicating poverty. To achieve these goals, gender equality, accountability, equitable globalization and good governance were required. Development strategies should treat individuals as central, and realize civil and political rights, as well as economic, social and cultural rights. This would entail a mix of policies, although any development policy should make the individual the main participant. States should act individually and collectively to realize the right to development so that individuals also realized their right to development. It hoped that time would be used well during the session to move the Group's discussions tangibly forward, including the discussions on the report of the Chair-Rapporteur, in order to reach a positive and consensual outcome. This would mean going beyond politics and focusing on the things that united the international community rather than those that divided it.

10. Speaking on behalf of the African Group and aligning itself with the Non-Aligned Movement, South Africa stated that, since the World Conference on Human Rights held in Vienna in 1993, the recognition of the right to development could no longer be in doubt. Article 22 of the African Charter on Human and Peoples' Rights was testimony to the transcendence of the right beyond the realm of soft international human rights law. The principles of the right to development were a central requirement in the continental economic and social renewal and development paradigm of the New Partnership for Africa's Development. One of the most persistent accountability deficits had, however, been at the international level in relation to the commitments to the global partnership for development. A strengthened and revitalized Global Partnership for Sustainable Development, as envisaged under the 2030 Agenda for Sustainable Development, was thus crucial. These points on accountability should be framed by the principles of the right to development as enshrined in the Declaration on the Right to Development. Furthermore, the phenomenon of globalization and its negative impact on the economies of developing countries had brought about disparities in the equitable sharing of the benefits of globalization. The Group of African States emphasized that issues such as trade and trade liberalisation, transfer of technology, infrastructure development and market access had to be managed effectively in order to mitigate the challenges of poverty and underdevelopment, to realize the Millennium Development Goals still to be reached, and to make the right to development and the 2030 Agenda for Sustainable Development a reality for everyone. As the international community commemorated the thirtieth anniversary of the Declaration on the Right to Development, it was time to move forward with a sense of urgency. Indeed, the timely adoption of the 2030 Agenda offered the international community the opportunity to recommit itself. The convening of a high-level segment at the seventy-first session of General Assembly on the right to development would mark a milestone. The 2030 Agenda was explicit about what was required for the realization of the right to development in the areas of education and health, and with regard to finance, technology development and transfer and other support. There was an urgent need for the

United Nations human rights machinery to ensure the operationalization of the right to development as a priority issue by the drafting of a convention on the right to development.

11. Egypt stated that development should address those in more need, and reaffirmed the need to eliminate all forms of poverty. International cooperation should be aimed at providing a sound and equitable environment. The three dimensions of sustainable development – economic, social and environmental – should be addressed. The transfer of technology, finance and other priorities also needed to be addressed. There was a need to reform the international financial and trade order to achieve the right to development. Egypt also stated that the right to development was at the heart of the 2030 Agenda for Sustainable Development.

12. Sri Lanka, aligning itself with the statement by the Non-Aligned Movement, reiterated the main principle of the right to development. The indivisible, interdependent and interconnected nature of human rights meant that the realization of the right to development was critical to achieving all human rights. There had to be a commitment to refine the draft right to development criteria and operational sub-criteria to advance towards an international legally binding instrument on the right to development that would contribute to an enabling international environment for sustainable development. Extreme poverty, climate change and financial crises should be addressed. No one should be left behind. Most of the Sustainable Development Goals were aimed at satisfying the most basic needs. Furthermore, international cooperation, the Global Partnership for Sustainable Development and other issues had to be addressed. The efficiency of the Working Group was a key factor. It should refocus on achieving the right to development as a human right and central to the 2030 Agenda for Sustainable Development.

13. India referred to the right to development as a neglected aspect of human rights. It concurred that, with the thirtieth anniversary and the 2030 Agenda for Sustainable Development, there was fresh vigour for an idea that had fallen off the global radar. Lasting progress would depend not only on national policies but also on an enabling international environment for development, given the historical injustices endured and the state of undemocratic global governance. These calls had gone unanswered. More needed to be done to advance towards the final destination; hard-won gains should not be wasted, and work should be focused on attaining Sustainable Development Goal 17 and the mainstreaming of the right to development in the activities of United Nations agencies, funds and programmes. Political will and genuine commitment were required to make the right to development a reality; the standards proposed by the Chair-Rapporteur would be a good starting point.

14. Brazil noted that the world had made considerable achievements in recent decades. Progress had, however, been uneven, and too many were still being left behind. The 2030 Agenda for Sustainable Development gave new impetus to the efforts of the international community to realize the right to development. The 2030 Agenda also placed people squarely at the centre of development. Sustainable Development Goal 17 provided new momentum to realize the right to development. The Working Group needed to conclude its unfinished business and move forward in its work, especially in the context of the 2030 Agenda. Brazil appreciated the draft set of standards of the Chair-Rapporteur and the report of the High Commissioner. The Working Group should focus on the objectives of its mandate, as stated by the Commission on Human Rights in its resolution 1998/72. Regardless of the differences and disputes of the past, it encouraged all Member States to move ahead.

15. China pointed out that the right to development was an inalienable human right, a common aspiration of all humanity and its shared values. Although it had a powerful impact on world peace and prosperity, there were impediments to its achievement. These included an international political and economic order that was inequitable and unjust.

Military interventions could provoke instability and sometimes result in increased poverty and extremism. These actions undermined the very foundations and livelihoods of developing countries. In addition, some developed countries refused to regard the right to development as a human right, therefore undermining the work of the Working Group. The obligation resided with Governments to ensure the implementation of this right and to observe the principles of the Charter of the United Nations, in particular sovereignty, equality and diversity among countries, and the rights of States to their own social systems and paths to development. The international community had to create a new international order that was equitable and just, where all countries participated equally and enjoyed equal opportunities to benefit from development. On the thirtieth anniversary of the Declaration and shortly after the adoption of the 2030 agenda, China had called upon all countries to show good will and commitment to give the right to development its proper status as a human right and to allow the Working Group to move forward in its mandate. OHCHR should promote the right to development as a priority and demonstrate its leadership in the United Nations for the implementation of the right.

16. Pakistan, aligning itself with the statement of the Non-Aligned Movement, stated that the right to development was a human right and a link between national and international priorities. Countries could not be selective with regard to partnership. While realizing the goals of the 2030 Agenda, in particular Goal 17, they should focus on issues such as the resolution of international disputes, which was central to the Declaration on the Right to Development. There should also be a focus on access to markets, affordable medicines and education, among others. OHCHR should ensure that the right to development had a specific space in its structure and did not disappear in the context of mainstreaming.

17. The Bolivarian Republic of Venezuela, aligning itself with the statement made by the Non-Aligned Movement, noted that, 30 years since the adoption of the Declaration on the Right to Development, it was more pressing than ever to allow for social progress and dignity for all people. Without the realization of the right to development, it was impossible to achieve other human rights. Some countries had blocked progress in this area, such as through unilateral coercive measures and foreign intervention. Countries should build regional integration on the basis of solidarity and the empowerment of women. It supported the need for a legally binding instrument on the right to development, and regretted the lack of political will and positions that had blocked the work of the Working Group in the past.

18. Cuba observed that there was still work to be done to achieve the right to development as a universal human right of individuals and peoples. Unfair trade and the economic crises were some of the obstacles to the right to development. They eroded the lives of millions of people who continued to live in poverty. Cuba rejected the efforts made to limit the scope and definition of the right to development, and assured its commitment to the Working Group and its willingness to work with all delegations to achieve results.

19. Indonesia, aligning itself with the statement of the Non-Aligned Movement, stated that the realization of the right to development was more pertinent than ever. The right to development had to be mainstreamed in the framework of the 2030 Agenda for Sustainable Development. It looked forward to progress on the criteria and sub-criteria. It also hoped for a non-politicized discussion, and that the right to development was recognized as a right.

20. Ecuador, aligning itself with the statement made by the Non-Aligned Movement, stated that the international community needed a legal framework agreed at the international level to move forward in the implementation of the right to development. The concept of "living well" had been incorporated into the Constitution Ecuador, which implied the inclusion of all persons and groups, social justice and other considerations. Ecuador hoped that the Working Group could move towards the approval of the criteria.

21. The United States of America was determined to have a constructive discussion. It maintained its position that there was a need for greater consensus on the definition of the right to development that was consistent with human rights, namely, universal rights that were held and enjoyed by individuals and that each individual may demand from his or her own Government. It emphasized the importance of indicators in any conversation on the right to development, and expressed the hope that Member States would respect its concerns about efforts to push too quickly in the Working Group, but rather seek to build consensus in a step-by-step fashion.

22. The United Nations Development Programme (UNDP) regarded human rights as intrinsic to development, and development as a means to realize human rights. This approach was at the centre of its Strategic Plan. UNDP reaffirmed the principles of national ownership and capacity-building. It identified six fundamental areas of action: (a) expanding knowledge and communication; (b) strong national ownership and leadership; (c) generating and sharing new ideas, knowledge and technologies; (d) broad and active coalitions; (e) enabling resources; and (f) robust follow-up and review, including timely disaggregated data. UNDP promoted a "MAPS" approach: mainstreaming, acceleration and policy support.

23. Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the working group on the right to development of the Geneva Forum of Catholic-Inspired Non-Governmental Organizations,[2] expressed its satisfaction that the Human Rights Council had decided at its thirty-first session to hold a panel discussion on the thirtieth anniversary of the Declaration on the Right to Development at its thirty-second session, although it regretted the abstentions. It was pleased with the decision of the Working Group to continue the second reading of the criteria and sub-criteria, and hoped that it would not be affected by the political polarization of previous sessions. It emphasized that the Declaration was an empowering instrument, and that it was imperative to achieve the right to development for the sake of the disadvantaged.

24. International-Lawyers.Org stated that the right to development had been central to the United Nations since the adoption of the Declaration. However, inequitable relations remained at the international and national levels. While efforts to achieve the right were far from a success, it forward to the one-day high-level segment to be held by the General Assembly, and hoped for strong civil society participation.

B. Informal consultations by the Chair-Rapporteur

25. The Chair-Rapporteur informed the Working Group on the informal consultations he had held between the annual sessions with regional and political groups and other stakeholders.

26. In October 2015, the Chair-Rapporteur presented his report to the Third Committee of the General Assembly and had an interactive discussion with the Committee members. He held a number of meetings with regional and political groups, heads of delegations and representatives of various United Nations departments and agencies, and civil society

[2] Statement made on behalf of Associazione Comunita Papa Giovanni XXIII, Association Points-Coeur, Caritas Internationalis (International Confederation of Catholic Charities), the Company of the Daughters of Charity of Saint Vincent de Paul, Dominicans for Justice and Peace (Order of Preachers), the International Institute of Mary Our Help of the Salesian Sisters of Don Bosco (IIMA), the International Organization for the Right to Education and Freedom of Education, MIAMSI, New Humanity, the Teresian Association and VIDES International (International Volunteerism Organization for Women, Education, Development).

organizations. In the meetings, the Chair-Rapporteur referred to his report requested by the Working Group (A/HRC/WG.2/17/2) and clarified that he was looking for common ground and did not intend to draft a document that would fuel controversy. Importantly, the Sustainable Development Goals, which were adopted by the General Assembly by consensus during the United Nations summit, set down key principles relating to the right to development, and should therefore guide the content of the proposed draft standards.

27. In February 2016, the Chair-Rapporteur spoke at an event marking the thirtieth anniversary of the Declaration on the Right to Development, co-organized by OHCHR, entitled "In search of dignity and sustainable development for all". At the thirty-first session of the Human Rights Council, he took the floor during the panel discussion on human rights mainstreaming, which focused on the 2030 Agenda for Sustainable Development and human rights, with an emphasis on the right to development. He also spoke at a high-level side event organized by the African Group on the right to development. In his statements, the Chair-Rapporteur emphasized that the adoption of the Sustainable Development Goals had been a major step towards the realization of the right to development. Lastly, he also conducted informal consultations with the coordinators of the regional and political groups and other interested delegations on the draft programme of work of the seventeenth session of the Working Group.

C. Report of the High Commissioner on the realization and implementation of the right to development

28. The Chief of the Right to Development Section of the Office of the High Commissioner introduced the report of the High Commissioner on the realization and implementation of the right to development (A/HRC/WG.2/17/3). The report was prepared pursuant to Human Rights Council resolution 30/28, in which the Council endorsed the recommendation of the Working Group adopted at its sixteenth session and requested the High Commissioner to seek the views of Member States in preparing a paper on the realization and implementation of the right to development, as elaborated in the Declaration on the Right to Development, in particular its article 4.

29. In the ensuing discussion, the Islamic Republic of Iran, on behalf of the Non-Aligned Movement, expressed its disappointment with the report prepared by OHCHR, given that it merely summarized the views of Member States, and did not meet its expectation of a substantive analysis of the right to development. It would have preferred that the report answer the following questions:

(a) What steps are required for the realization and implementation of the right to development?

(b) How can international law in general, and human rights instruments, including in particular the International Covenant on Economic, Social and Cultural Rights, contribute to the realization of the right to development, in particular through friendly relations and cooperation among States?

(c) International cooperation is an integral element for the realization of the right to development; what are the concrete measures taken by OHCHR to promote international cooperation in the field of the right to development?

(d) How can the international community, in particular developed countries, help developing countries to foster their comprehensive development policies?

(e) What has the United Nations system and OHCHR done to ensure the full exercise and progressive enhancement of the right to development at the international level?

30. Namibia aligned itself with the views of the Non-Aligned Movement and thanked OHCHR for the report, which reflected the feedback provided by the inputs. The outcome was not anticipated, as there was a difference between what the report presented and what the resolution requested. An analytical paper was expected, given that the submissions of States was supposed to be only a component to inform the report. Mexico welcomed the report, and thanked the secretariat for its support. The report had provided valuable elements, like the successes and challenges that States had faced to ensure the right to development and the impact of the right to development on national human rights policies. In recent years, Mexico had redesigned its social policy development to incorporate the respect and promotion of human rights as one of its top priorities. This practice had increased accessibility, capacity and the reach of development programmes. However, important challenges remained in terms of institutional, budgetary and technical coordination, and there was a need for specialized monitoring mechanisms.

31. The Chief of the Right to Development Section thanked the delegates for their comments. He explained that the recommendation made by the Working Group had been interpreted as a request for a report compiling the views of States. Furthermore, the breadth of the subject matter would have made it very difficult to address the subject matter comprehensively within the word limit for the report. He added that the Working Group might wish to clarify its expectations in the recommendations of the current session. The Office remained fully committed to implementing its recommendations.

D. Interactive dialogue on the 2030 Sustainable Development Agenda in the context of the right to development

32. On the second day of the session, the Working Group held an interactive dialogue on the 2030 Agenda for Sustainable Development in the context of the right to development with the former co-facilitators for the intergovernmental negotiations on the post-2015 development agenda: the Permanent Representative of Ireland to United Nations Headquarters, Ambassador David Donoghue, and the Permanent Representative of Kenya to the United Nations Headquarters, Ambassador Macharia Kamau.

33. Ambassador Donoghue stressed that the right to development had found its rightful place in the 2030 Agenda, and that it provided a new context to look at the right to development. The right to development was given a reasonably prominent position in two specific references, which reflected the significant respect for the right to development; a number of references in the document moreover recalled the Declaration; in some pledges the preamble, that no one would be left behind; this made clear that inequality within and among countries had to be addressed. The 2030 Agenda could be viewed as a landmark document for achieving the right to development. The agenda dealt with the factors impeding the realization of human rights, showing the clear connection between human rights and development. There was also emphasis on Goal 17, which outlined a set of commitments and the means of implementation. The Agenda called for action at the global, regional and national levels with a governmental rather than sectoral approach. Global indicators had been agreed upon at a technical level, but the issue of data collection and capacity were particularly important, given that many Governments did not have sufficient statistical capacity. This issue would be discussed at the high-level political forum on sustainable development in July 2016. Although the 2030 Agenda for Sustainable Development was not legally binding, it was politically and morally binding. Implementation would be improved by mutual learning and the exchange of best practices on a voluntary basis. This would require political will, commitment and goodwill. The risk of political embarrassment was the main source of leverage: States would not want to be seen as underperforming, particularly at the regional level.

34. Ambassador Kamau spoke of how the Sustainable Development Goals and the 2030 Agenda for Sustainable Development had changed the debate on development and how geographical divides had been put to rest. The Agenda had structurally changed the underpinnings of the way the international community looked at development. It was, however, difficult to change people's ideological positions. The universal goals conveyed the message that development affected all nations, and poverty affected all countries, which now faced the challenge of bringing development to all their peoples. Twentieth-century perceptions of development were old and tired. The Sustainable Development Goals emphasized that all lives mattered, and this was the most powerful message they sent. The Working Group should not let itself become stuck in a North-South divide in the conceptualization of the right to development. The 2030 Agenda was morally binding; he therefore asked whether a legal or a moral obligation was more important. All countries were in "the same boat" and faced similar challenges. The 2030 Agenda had resulted in a conceptual framework shift; the Working Group therefore had to ask if it was shifting with it. One challenge to the implementation of the right to development was what the meaning of development assistance as "legally binding" was. This would require defining the understanding of development cooperation. The moral obligation was the higher bar. Goal 17 and the Addis Ababa Action Agenda had codified expectations in a way that could be followed up. In these ways, the work of the Working Group had been structured, and many aspects of the right to development were already legally binding. There was a universal, integrated agenda and a political infrastructure in place that provided a much more favourable position for discussions on the right to development.

35. In the interactive dialogue that followed, the Islamic Republic of Iran, on behalf of the Non-Aligned Movement, referred to the 2030 Agenda for Sustainable Development as a document that reflected the aspirations of global development, and expressed the hope that the full implementation of the Agenda would move the world forward towards the realization of the Charter of the United Nations. The goals and targets of the 2030 Agenda were all about the right to development, and called for international cooperation and collaborative partnership. International cooperation was integral to the implementation and realization of the right to development, and could help all to overcome the challenges that hinder progress. The Islamic Republic of Iran called upon the specialized agencies, funds and programmes of the United Nations to mainstream the right to development in their policies and operational activities, and also in policies and strategies of the international financial and multilateral trading system. The high-level political forum was the most appropriate venue for considering the mainstreaming of the right to development into the implementation of the 2030 Agenda.

36. The European Union spoke of the 2030 Agenda as a "guiding beacon" for the international community. It stressed the need to maintain momentum, and that the realization of human rights and sustainable development were closely related. The international community needed to promote a model of development that promoted and guaranteed not only the right to development but all human rights, with particular attention to justice, equality and equity, so that no one would be left behind. The European Union supported an inclusive and transparent follow-up mechanism of the 2030 Agenda that promoted ownership. The European Union asked the speakers how the international community could implement the 2030 Agenda effectively and without delay, and how they saw the role of indicators in implementation.

37. Pakistan, on behalf of the Organization of Islamic Cooperation, stated that there were clearly a few key areas where the 2030 Agenda and the right to development interacted. The 2030 Agenda explicitly mentioned the right to development as an instrument that informed the Agenda itself; it called upon Member States to realize the right to development. Article 10 of the Vienna Declaration and the Programme of Action called upon the international community to implement effective international cooperation for the

right to development. In its paragraph 63, 2030 Agenda referred to "policy space" and "national development efforts", and the enabling environment, which would be a challenge. Examples were given of the Doha Development Round, of policy coordination and coherence, and of conflicts and occupations that were all obstacles hampering the implementation of the Agenda. Pakistan also referred to the "cherry picking" of obligations and targets, and questioned how far a moral obligation would take the international community.

38. Tunisia, aligning itself with the views of the Non-Aligned Movement and the Organization of Islamic Cooperation, expressed doubts on the practicalities of the conceptual framework change, which it did not view as profound. Member States had differing approaches to the economy, and while partnership for development was required for an enabling environment, development assistance and the current economic and financial frameworks would hinder the achievement of goals in developing countries. Cuba, supporting the views of the Non-Aligned Movement and endorsing the statement made by the Organization of Islamic Cooperation, reiterated the view that obstacles persisted. It referred to how the Working Group had "put the cart before the horse" by debating the issue of indicators before agreeing on a larger agenda, and stressed that lessons could be learned from how this had been done in the 2030 Agenda. Cuba asked the speakers how they saw implementation going forward, and how the Working Group could contribute.

39. Namibia, aligning itself with the views of the Non-Aligned Movement, pointed out that international cooperation was indispensable for addressing obstacles that were beyond the capacity of national Governments. The focus should be on development, not benevolence, and there should be no "cherry picking". What was needed was not a moral obligation but a legally binding instrument to ensure that the right to development was implemented properly. South Africa, aligning itself with the statement made by the Non-Aligned Movement, spoke of the 2030 Agenda for Sustainable Development and Agenda 2063: The Africa We Want, which also sought to address the triple challenge of poverty, unemployment and inequality. The most persistent accountability deficit had been witnessed in relation to the financial commitments to the global partnership for development envisaged previously under Goal 8. A strengthened and revitalized Global Partnership for Sustainable Development was thus crucial, and based on the principles of the Declaration on the Right to Development. There was a need for the inclusion of the principle of common but differentiated responsibilities, which was highlighted by many delegations. It also referred to the role of the private sector and business, and the need for their accountability in relation to human rights and humanitarian violations.

40. The United Kingdom of Great Britain and Northern Ireland shared the views that the Sustainable Development Goals were universal, that human rights were the cornerstone for achieving them, and that national development plans incorporating a "whole of Government" approach were required, together with partnerships to engage in best practices to coordinate and monitor implementation. The United Kingdom was fulfilling its commitments through development assistance, boosting partnerships and cross-government funds. It referred to the need for global transparency standards, the "golden thread" of which were democracy, the rule of law, property rights, a free media and open, accountable institutions. The United States of America discussed its long-standing commitment to human rights and development, and how human rights were integrated into its development cooperation. It pointed out the importance of indicators and data-driven analysis.

41. China reiterated the view that the 2030 Agenda for Sustainable Development was a landmark in sustainable development, and mentioned the importance of poverty eradication. It also referred to the need to tackle environmental challenges, to promote social justice and to ensure better and sustainable development. At the international level, partnerships and coordination were essential. China spoke of its own national commitments

and promotion of financial support and capacity-building. Japan strongly supported the 2030 Agenda and its human-centred approach, but had questions relating to indicators and the role of private sector investment. Brazil discussed how the 2030 Agenda had reinvigorated multilateralism, and reaffirmed the three dimensions of development as enshrined in the Rio Declaration on Environment and Development of 1992. The Agenda required the strengthening of international cooperation and the doubling of efforts on the right to development, to move away from polarization and to achieve consensus. Brazil enquired about the role of the Working Group in the Agenda. Kenya observed that the right to development did not always receive the support and attention it deserved by the Human Rights Council. Bearing in mind the time it would take to negotiate a legally binding instrument, given current challenges, Kenya asked what could be done to move the right to development agenda forward. Ecuador raised a question on how the fair distribution of wealth within countries could be measured.

42. The United Nations Conference on Trade and Development pointed out its long-standing commitment to and participation in the sessions of the Working Group. Given the impetus provided by the 2030 Agenda for Sustainable Development, it was important that the Working Group find a concrete outcome and role within this framework, to also utilize valuable time and resources.

43. South Centre emphasized the need for common but differentiated responsibility. It referred to examples of intellectual property rights, transfer of technology and actions on climate change where it was not always clear who was responsible for what. Given differentiated capabilities, there was also a need for differentiated responsibilities. On measurability, there was also the question regarding both the 2030 Agenda for Sustainable Development and human rights of whether all components could be measurable as such. According to Associazione Comunità Papa Giovanni XXIII, the new Agenda had incorporated the transformative vision of the Declaration on the Right to Development. If adequately implemented, it would provide new impetus for the realization of the right to development. A right to development approach to the Sustainable Development Goals would create positive effects, including the understanding that States have duties to ensure development as a human right and not as a matter of charity. It referred to the need for participatory and inclusive monitoring. The global high-level political forum should build on the work of human rights mechanisms, while the Working Group should also take charge of the important role it could play. International-Lawyers.Org pointed out that the process of drafting the Sustainable Development Goals had begun by agreeing on issues of principle, not the specifics of indicators. It observed that human rights today were often legal rights. With regard to the 2030 Agenda, the greatest flaws were the tendency to make unequal things equal, and that not all States or all peoples had the same responsibilities.

44. In replying to the questions asked, Ambassador Kamau noted that the general trajectory was a positive one, despite war, conflict and other disasters. The right to development agenda had to move forward. The world had been moving on, irrespective of developments in the Working Group. The 2030 Agenda had to be addressed in an integrated fashion, and not by "cherry picking". Expectations had to be managed; the Sustainable Development Goals did not prescribe a particular political or economic model, but were aimed at reaching agreement on concrete goals and targets. The discussion could not have started with indicators, and that work had been delegated to a technical group. There was no need to "reinvent the wheel"; the Working Group should ask itself whether it really wanted to embark on an exercise of identifying indicators or leave it to a technical group. All forms of resource mobilization were important, including at the domestic level. Accountability deficits had to be closed. The common but differentiated responsibilities were part and parcel of the 2030 Agenda, so this had been settled. Many of the comments were acknowledged. Ambassador Kamau reiterated the need to search for the common good. In this regard, the 2030 Agenda had set a high bar, and there was enough ambition

and common ground to succeed. Implementation would be achieved at the national level and through commitments made in the framework of international instruments that would require monitoring. Ambassador Donoghue reiterated that it would not have been possible to finish the work on indicators in September 2015, and that it was to be concluded separately and the work done by a technical body. There would be no clustering of topics, given that implementation was only at its early stages. He endorsed the idea that the 2030 Agenda should be seen as an opportunity to reinvigorate the role of the Working Group, and that the positive energy of the Sustainable Development Goals should be used to find new ways forward.

E. Second reading to refine draft right to development criteria and corresponding operational sub-criteria

45. The Working Group completed the second reading of the draft right to development criteria and the corresponding operational sub-criteria listed in the report of the high-level task force (A/HRC/15/WG.2/TF/2/Add.2, annex) with the aim of refining them, starting from sub-criterion 1 (h) (ii) bis.

46. The Working Group decided to adopt the same methodology as followed previously, looking at the criteria and the sub-criteria simultaneously. Some speakers suggested that explanations and reasons be provided for the various proposals made, particularly if the concern was about the concept or the language used.

47. One criterion and 14 sub-criteria were agreed ad referendum.

48. Criteria 1 (h), (i) and (j) and corresponding sub-criteria were discussed at the session covering topics such as the sharing of benefits of natural resources and issues relating to conflict and peace and security. Discussions also covered the adoption and periodic review of development strategies at the national and international levels, including collection and access to data, plans of action, political and financial support, and consultation and participation. Criterion 2 (a) and corresponding sub-criteria relating to law, policy and legal frameworks and sustainable development and right to development were discussed. Criterion 2 (b) and corresponding sub-criteria, covering topics such as human rights instruments, obligations, right to development and national development strategies, were also discussed. The views expressed during consideration of criterion 2 (c) and corresponding sub-criteria concerned access to information, effective remedies, access to justice, facilitating participation, and non-discrimination. The Working Group, in examining criterion 2 (d) and its sub-criteria, expressed views on good governance, the rule of law, global governance and the effective participation of all countries in international decision-making. Discussions on criterion 2 (e) and its sub-criteria covered good governance and the rule of law at the national level, corruption, transparency, and access to public services. On criterion 3 (a) and its sub-criteria, discussions covered the benefits of sustainable development, including access to services, infrastructure gaps, the equitable sharing of the benefits of globalization and the removal of international obstacles. Discussions on criterion 3 (b) and its sub-criteria covered the fair sharing of the burdens of development, assessing environmental, social and economic risks, common but differentiated responsibilities, and international cooperation. The discussions held on criterion 3 (c) and its sub-criteria featured the promotion of social justice, the eradication of extreme poverty and hunger, policies for ensuring decent work, strengthening international cooperation, land and housing related rights, access to education, and eliminating violence and trafficking. A range of new proposals for sub-criteria were also discussed by the Working Group.

49. A broad range of perspectives emerged during the consideration of individual criteria and sub-criteria. A debate was held on the use of such terms as the "human rights of migrants", and on how to combine references to human rights and refugees law. In this regard, discussions were held on references to international mechanisms for conflict prevention, and on whether this was the appropriate forum to discuss them. On sub-criterion 1 (j), a discussion was held on international development strategies, which were clarified as a focus on international cooperation as opposed to national development strategies.

50. Other issues discussed concerned participation, participatory processes, affected groups and vulnerable populations, preventive solidarity, the promotion of human rights education, the contribution of human rights mechanisms for evaluating the right to development, and the Sustainable Development Goals.

51. References to binding legal frameworks on the right to development were debated, including concerns raised on the term "right to development-based approach", the ratification of human rights instruments, the term "good governance" as opposed to "global governance", "accountability for" versus "promotion of" respect by business, the context and meaning of transparency, how to deal with corruption, and utilizing such terms as "equity" and "equitable".

52. The issue of data collection capacity was also raised. It was found that some developing countries required assistance in this area.

F. Consideration of the report of the Chair-Rapporteur

53. The Chair-Rapporteur of the Working Group introduced his report containing standards for the implementation of the right to development, prepared pursuant to a request of the Working Group as endorsed by the Human Rights Council in its resolution 30/28 (A/HRC/WG.2/17/2). The aim of the standards was to break the deadlock that had persisted in the Working Group and to identify common ground and agreed language. Since the right to development had to be people-centred, it could not be achieved or met without responding to human needs. The adoption of the 2030 Agenda for Sustainable Development would facilitate the task of the Working Group. National capacities and capabilities for realizing the right to development differed, and international cooperation was necessary. With regard to methodology, the Chair-Rapporteur identified the key challenges and obstacles to the implementation of the right to development, and focused on the implementation of universally accepted core development goals, such as those outlined in article 8 of the Declaration on the Right to Development. Of particular importance was Sustainable Development Goal 17, given that it related to the means of implementation and the revitalization of the Global Partnership for Sustainable Development.

54. The standards were intended as a road map or framework for action for achieving the Goals. They employed agreed language so as to ensure that they were non-controversial and enjoyed the broadest possible endorsement. The four standards proposed were as follows:

> **Standard 1**: All States shall demonstrate the necessary political will and commitment to realize the right to development on the basis of the obligations, rights and duties that they have accepted as a result of the decisions and resolutions adopted by consensus by the international community.
>
> **Standard 2**: All States shall cooperate to create the political, economic and social environment necessary to allow the implementation of the right to development.

Standard 3: The right to development shall be centred on the individual and promoted at the national level, which requires a comprehensive and inclusive approach based on good, responsible governance. Since there are different levels of development, however, national efforts must be strengthened and reinforced by regional cooperation, international assistance and contributions by development agencies at the national, regional and international levels, and also by inputs from civil society bodies and the media.

Standard 4: Priority should be given to addressing the most basic human needs, namely, poverty, food, water and sanitation, health, education, housing and gender equality.

55. With regard to monitoring the implementation of the above standards, the Chair-Rapporteur proposed a voluntary mechanism. States, regional and international organizations would submit reports on efforts made at the bilateral, regional and international levels to the Human Rights Council, for example, within the context of the universal periodic review. In the long term, quantitative criteria should be used to measure national and international efforts. The indicators for measuring the implementation of the Sustainable Development Goals could facilitate measurement of the implementation of the right to development. He stressed that a selective or segmented approach should not be taken to human rights, which are interrelated and interdependent. The right to development addressed human needs, which were critical to the attainment of human rights. The standards were not an end in themselves, but rather the beginning of a journey towards the full implementation of the right to development, the "stepping stones" or a road map to the final destination.

56. During the discussion, the European Union stated that the document was timely, especially with a view to the recently adopted 2030 Agenda for Sustainable Development. Although it supported the use of agreed language, it felt that it might be excessive to affirm that the 2030 Agenda constituted an impetus to the realization of the right to development and solved controversies about the right to development, given that divergences persisted. While the standards focused on international cooperation, national responsibilities had to be stressed. While the new international development goals were crucial for the realization of the right to development, the goals should not be implemented without reflecting on the links with already existing human rights standards on housing, education and gender equality, which are binding upon States parties. Legally binding human rights standards should not be reformulated with a view of finding consensus. On the core elements, the European Union argued that participation, equality, non-discrimination and self-determination should be singled out clearly as core standards or cross-cutting elements. Gender equality should be a cross-cutting issue also. Some questions were raised with regard to the reference to women and their nurturing role in the family, as this seemed to suggest that this was the sole activity of women, and to avoiding duplication with the Sustainable Development Goal monitoring process.

57. The Islamic Republic of Iran, on behalf of the Non-Aligned Movement, stated that the standards prepared by the Chair-Rapporteur underscored a right to development-based approach. The implementation of the 2030 Agenda for Sustainable Development was dependent on an integrated, holistic and comprehensive approach to the implementation and realization of the right to development, which required a firm commitment by all actors. While giving significant impetus to the implementation of the right to development, the 20130 Agenda was not a substitute for discussion on the conceptual framework of the right to development, such as the elaboration of norms. The Non-Aligned Movement remained concerned about existing challenges and conceptual debates on the right to development. The report of the Chair-Rapporteur was based on a consensual and non-controversial understanding of the right to development. The Non-Aligned Movement

maintained that the consensus requirement was not an absolute one, and should not come at the expense of ensuring that the right to development was a reality for all. Regarding the standards, the Non-Aligned Movement was of the view that this initial discussion, together with the proposals made by Member States, would form the basis for the constitution of international standards and a convention on the right to development. International cooperation was an integral part to the implementation of the right to development. The right to development was distinct and should not be defined through secondary aspects of development. With regard to the methodology outlined by the Chair-Rapporteur, the Non-Aligned Movement would take the liberty to consider the text, make it its own and use it for whatever purpose it deemed fit.

58. Cuba stated that the report and conclusions had been prepared by the Chair-Rapporteur, and that it was not logical to negotiate his conclusions. It disagreed with the view that the standards were too focused on international cooperation, and in fact felt that they were too focused on the national level. Namibia, Egypt, South Africa, Tunisia and the Bolivarian Republic of Venezuela supported the statement delivered by the Islamic Republic of Iran on behalf of the Non-Aligned Movement. Namibia commented that the conclusions of the Chair-Rapporteur were not an end in themselves, but rather the beginning of a new process, even though the procedural aspects of discussions on them still required clarification. Egypt referred to the critical timing of the report, stating that it was a foundation on which to develop the right conditions for the right to development to be realized. To ensure the political will required in standard 1, the document should refer to international cooperation, the transfer of technology and the means to achieve the right to development as an integrated approach covering social, economic and environmental development.

59. Brazil stated that the report of the Chair-Rapporteur, which contained loud and clear messages on the right to development, would aid the work of the Working Group. It agreed with the Chair-Rapporteur that the human right to development was no longer questioned, and that the document outlined a practical and realistic approach. With a collaborative and cooperative spirit, the Sustainable Development Goals would guide the Working Group in its work, giving the most significant impetus to the realization of the right to development. South Africa referred to the developments of recent years, when the issue of the criteria and sub-criteria had left the Working Group in disarray and had not been cost-effective. It supported the vision of the Chair-Rapporteur to put the Working Group on a more positive trajectory. The standards provided food for thought for work on a convention on the right to development. The Bolivarian Republic of Venezuela stated that the report of the Chair-Rapporteur would render the mandate of the Working Group more effective by promoting reflection. It provided a road map to be debated, and mechanisms and tools to move forward.

60. Argentina thanked the Chair-Rapporteur for his report, and expressed its appreciation for the set of standards presented to the Working Group for its consideration. Engagement with the 2030 Agenda for Sustainable Development was a priority for the Government of Argentina. Development should be understood as "sustainable development". The 2030 Agenda renewed the commitment with an integral human development strategy, which included people and the environment, and was aimed at strengthening institutions, civil society and international cooperation.

61. Japan reiterated the view that there should be more balance between national responsibility and international cooperation; the report of the Chair-Rapporteur tended towards the latter. It requested more clarity with regard to the use of such terms as rights and obligations in the document. It concluded with a call to discuss the document in more detail and to reach consensus. Tunisia stressed the pressing need for a favourable environment for realizing the right to development. While this was connected to

Sustainable Development Goal 17, there were many elements in the 2030 Agenda that should be factored in. It referred to the trade system, the need for policy space, and the participation of countries in global governance, and gave examples relating to food and health, where a favourable international environment was lacking.

62. The United States of America commented on the characterization of the Sustainable Development Goals, given that they were aspirational and non-binding goals, not parallel to human rights. Wording that suggested legal obligations and binding commitments were therefore to be avoided. It also suggested that national efforts be highlighted and that more references be made to the Vienna Declaration and Programme of Action. The United Kingdom of Great Britain and Northern Ireland reiterated its view on the need for national obligations to be stressed, and that reference be made also to Sustainable Development Goal 16. It raised broader questions on how the Goals would be referenced in the report of the Working Group on the current session, and whether the monitoring system would not duplicate those being considered for the Goals.

63. Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the working group on the right to development of the Geneva Forum of Catholic-Inspired Non-Governmental Organizations,[1] agreed that on the need to set standards, which were crucial for responding to human basic needs and to render justice to rights that had been too long denied. It hoped that consensus could be reached on the proposed standards. International-Lawyers.Org viewed the standards as basic consensus on agreed text, and shared the view of the Chair-Rapporteur that there were uncontroversial. Centre Europe – Tiers Monde recalled that all aspects of the right to development were interdependent, and the risk of selectivity.

64. The Chair-Rapporteur responded that his report was the document that he had been mandated to prepare, with his views. Even though it was not intended as a document for negotiation or to generate consensus, the text itself was based on consensus documents. He was not reformulating legally binding standards. Core elements, such as participation, non-discrimination, equality and self-determination, could still be seen as contested. Characterizing the 2030 Agenda for Sustainable Development and the right to development was an unnecessary area of controversy and debate. There was no imbalance towards international cooperation, given that both standards 1 and 3 were specifically worded to cover national responsibilities. On gender roles, the language had been taken from the Sustainable Development Goals. The logic of the proposal on monitoring was to outline a voluntary commitment, which implied no obligation or need for consensus. This would be pending agreement on the follow-up to the 2030 Agenda. While the Sustainable Development Goals were non-binding and aspirational only, States were expected to abide by their commitments. The Goals were therefore an important achievement.

IV. Conclusions and recommendations

65. **At the final meeting of its seventeenth session, on 3 May 2016, the Working Group adopted, by consensus, its conclusions and recommendations, in accordance**

[1] Statement made on behalf of Associazione Comunità Papa Giovanni XXIII, Association Points-Coeur, Caritas Internationalis (International Confederation of Catholic Charities), the Company of the Daughters of Charity of Saint Vincent de Paul, Dominicans for Justice and Peace (Order of Preachers), the International Institute of Mary Our Help of the Salesian Sisters of Don Bosco (IIMA), the International Organization for the Right to Education and Freedom of Education, MIAMSI, New Humanity, the Teresian Association and VIDES International (International Volunteerism Organization for Women, Education, Development).

with its mandate, as established by the Commission on Human Rights in its resolution 1998/72.

A. Conclusions

66. The Working Group expressed its appreciation to all those who had contributed to the proceedings of its seventeenth session.

67. The Working Group welcomed the presence and participation of the Deputy High Commissioner at the session, and had noted her opening remarks.

68. The Working Group welcomed the re-elected Chair-Rapporteur, and commended him for his able stewardship in guiding deliberations during the session.

69. The Working Group took note of the standards for the implementation of the right to development (A/HRC/WG.2/17/2), and expressed its gratitude and appreciation for the efforts made by the Chair-Rapporteur in its preparation, pursuant to Human Rights Council resolution 30/28. It considered the report a useful basis for further deliberations on the implementation and realization of the right to development.

70. The Working Group welcomed the conclusion of the second reading of the draft criteria and operational sub-criteria (A/HRC/15/WG.2/TF/2/Add.2).

71. The thirtieth anniversary of the Declaration on the Right to Development in 2016 presented a unique opportunity for the international community, including the Working Group, to demonstrate and reiterate its political commitment and to accord the right to development the high profile it deserves, and to redouble its efforts to implement the right to development. In this regard, the Working Group welcomed the events that will be held on this occasion.

72. The Working Group took note of the paper submitted by the High Commissioner on the realization and implementation of the right to development, as elaborated in the Declaration on the Right to Development.

73. The Working Group took note with appreciation of the presence of the former co-facilitators for the intergovernmental negotiations on the post-2015 development agenda, acknowledged that the 2030 Agenda for Sustainable Development was a landmark document, and looked forward to the possible engagement of the Working Group with the high-level political forum.

B. Recommendations

74. The Working Group recommended that:

(a) It continue to consider criteria and operational sub-criteria with a view to finalize the text as expeditiously as possible, preferably no later than its nineteenth session;

(b) OHCHR make available on its website and to the Working Group a conference room paper containing the draft right to development criteria and operational sub-criteria following its second reading, and the comments and views submitted at the sessions by Governments, groups of Governments, regional groups, and stakeholders, respectively;

(c) OHCHR take sufficient measures to ensure balanced and visible allocation of resources, and pay due attention to the visibility and effective

implementation and mainstreaming of the right to development by systematically identifying and undertaking tangible projects dedicated to the right, and that it continue to update the Council and the Working Group on progress in that regard;

(d) The Working Group, in its future deliberations, study the contributions made by States at the national, regional and international levels to the implementation of the right to development, in keeping with mechanisms relating to the Sustainable Development Goals;

(e) The High Commissioner include in his next annual report an analysis on the realization and implementation of the right to development, taking into account existing challenges and making recommendations on overcoming them;

(f) The OHCHR consider facilitating the participation of experts in the eighteenth session of the Working Group, to provide advice with a view to contribute to discussions on the implementation and realization of the right to development, and on the implications of the 2030 Agenda for Sustainable Development;

(g) The Working Group consider further the set of standards conducive to the implementation and realization of the right to development.

Annex

List of attendance

States Members of the Human Rights Council

Algeria, Belgium, Bolivia (Plurinational State of), Burundi, China, Cuba, Ecuador, Ethiopia, France, Germany, Ghana, India, Indonesia, Kenya, Maldives, Mexico, Morocco, Namibia, Netherlands, Qatar, Russian Federation, Saudi Arabia, Slovenia, South Africa, Switzerland, Togo, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of).

States Members of the United Nations

Angola, Argentina, Austria, Azerbaijan, Brazil, Bhutan, Bulgaria, Burkina Faso, Brunei Darussalam, Cambodia, Colombia, Costa Rica, Czech Republic, Egypt, Finland, Gabon, Guatemala, Haiti, Honduras, Iran (Islamic Republic of), Italy, Japan, Lao People's Democratic Republic, Mali, Mozambique, Myanmar, Norway, Pakistan, Poland, Republic of Korea, Senegal, Singapore, Slovakia, Spain, Sri Lanka, Syrian Arab Republic, Thailand, Tunisia, United States of America, Uruguay, Zimbabwe.

Non-Member States represented by an observer

Holy See.

United Nations agencies, funds and programmes

Food and Agriculture Organization of the United Nations (FAO), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO).

Intergovernmental organizations

European Union, Organization of Islamic Cooperation, International Development Law Organization, South Centre.

Non-governmental organizations in consultative status with the Economic and Social Council

General

Centre Europe – Tiers Monde (CETIM), New Humanity.

Special

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